HOUSE RESEARCH ORGANIZATION
Texas House of Representatives

focus REPORT

December 18, 2017

Major Issues

of the 85th Legislature, Regular Session and First Called Session

During its 2017 regular session, the 85th Texas Legislature enacted 1,211 bills and adopted nine joint resolutions after considering 6,800 measures filed. The Legislature enacted 12 more bills during the special session held in the summer.

This report includes many of the highlights of the regular session and the first called session. It summarizes some proposals that were approved and some that were not. Also included are arguments offered for and against each measure as it was debated. The legislation featured in this report is a sampling and not intended to be comprehensive.

Other House Research Organization reports covering the 2017 sessions include those examining the bills vetoed by the governor and the constitutional amendments on the November 7, 2017, ballot, as well as an upcoming report summarizing the fiscal 2018-19 budget.

Number 85-8

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* Finally approved

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Bills in the 85th Legislature
Regular Session

	Introduced	Enacted*	Percent enacted
House bills	4,333	700	16.2%
Senate bills	2,298	511	22.2%
TOTAL bills	6,631	1,211	18.3%
HJRs	111	3	2.7%
SJRs	58	6	10.3%
TOTAL joint resolutions	169	9	5.3%

*Includes 50 vetoed bills — 36 House bills and 14 Senate bills

	2015	2017	Percent change
Bills filed	6,276	6,631	5.7%
Bills enacted	1,323	1,211	-8.5%
Bills vetoed	41	50	22.0%
Joint resolutions filed	200	169	-15.5%
Joint resolutions adopted	7	9	28.6%
Legislation sent or transferred to Calendars Committee	1,504	1,686	12.1%
Legislation sent to Local and Consent Calendars Committee	1,144	974	-14.9%

Source: Texas Legislative Information System, Legislative Reference Library

Business Regulation and Economic Development

* Finally approved

Prohibiting linkage fees on new construction

HB 1449 by Simmons
Effective May 29, 2017

HB 1449 prohibits political subdivisions from imposing certain fees on new construction to offset the cost or rent of other residential housing. The bill does not apply to certain zoning waivers or certain affordable housing and property tax abatement programs.

Supporters said

HB 1449 would prevent localities from imposing short-sighted and counterproductive fees on new construction. Although no Texas city currently imposes linkage fees, doing so would drive up the price of housing and reduce the supply of new homes. According to estimates from the National Association of Home Builders, for every $1,000 increase in median new home price in Texas, more than 13,000 households are priced out of the market. These fees, which are a de facto tax and directly increase the price of new construction, would exacerbate the shortage of affordable housing in several Texas cities.

While opponents contend that linkage fees are a way to collect revenue from a broad cross-section of the market, these fees actually skew the market by only taxing new entrants. A home built after the enactment of a linkage fee suddenly costs more than an identical home next door. This drives up the valuation of existing homes, increasing their property tax burden, and disconnects the value of homes from their actual cost to build.

The state imposes many restrictions on the ability of localities to collect revenue, like property tax and sales tax rate caps, so HB 1449 would not be an unreasonable infringement on local control. Linkage fees in cities outside of Texas have shown a disturbing trend of starting low and quickly rising to a stifling level. In any case, local control is a means to more effective government, not an end in and of itself.

Finally, localities with affordable housing shortages typically have many alternatives to reduce the cost of housing. They could expedite permits and zoning, reduce fees, or spend more money on affordable housing from other revenue sources. Localities do not need to be allowed to levy a counterproductive fee.

Opponents said

HB 1449 would be an unnecessary infringement on local control, prohibiting cities from collecting revenue necessary to fund affordable housing. Linkage fees are not counterproductive, and they do not impede economic development because they are low and broadly applicable across all forms of new construction. They also are easier to administer than alternatives and provide more market certainty than density bonuses, which are optional and awarded on a case-by-case basis.

It should be left to cities to decide the best way to fund affordable housing, and the state should not intervene to address policies that have a strictly local effect.

The bill would prohibit one of the only viable revenue sources for affordable housing. Linkage fees are used in many high-growth cities and have proven more effective than other alternatives. Moreover, affordable housing assistance programs — both on the state and federal levels — are facing cuts to an already insufficient level of funding. Voluntary programs such as density bonus programs are ineffective because developers often choose to pay a fee or not participate in the program at all, rather than provide affordable housing.

Notes

The HRO analysis of HB 1449 appeared in Part Four of the May 2 *Daily Floor Report*.

Installing network nodes in public rights of way

SB 1004 by Hancock
Effective September 1, 2017

SB 1004 allows wireless network companies to place network nodes in a public right-of-way (ROW). A network node facilitates wireless communications between user equipment, such as a cell phone, and a communications network. Under the new law, installation of network nodes is subject to size and placement restrictions, applicable codes, and the utility pole owner's construction standards. The bill provides rule and fee structures to reimburse cities for use of the ROW. Municipalities retain authority to manage the public ROW to ensure the health, safety, and welfare of the public and receive compensation for installing nodes on utility and light poles or similar structures.

Access and approvals. Subject to approval of a permit application if needed, a network provider, without the need for a special use permit, similar zoning review, or further land use approval, in a public ROW, may:

- construct, modify, maintain, operate, relocate, and remove a network node or support pole;
- modify or replace a utility pole or node support pole; or
- allow network nodes to be placed beside other network nodes on a service pole, subject to an agreement with the municipality.

Use of public ROW. A municipality may not enter into an exclusive agreement for use of the ROW to build, operate, market, or maintain network nodes or support poles.

Rates to use the public ROW may not exceed an annual amount equal to $250 per network node installed in the public ROW in the city limits. The municipality may charge a provider a lower fee if it is nondiscriminatory, related to use of the public ROW, and not a prohibited gift of public property. The fee may be adjusted once annually by half the annual change to the consumer price index.

Subject to the bill and federal and state law, a municipality still may exercise zoning, land use, planning, and permitting authority in the city limits, including for utility poles. A network provider must ensure the operation of a network node does not cause harmful radio frequency interference with a mobile telecommunications operation of the municipality authorized by the Federal Communications Commission.

Installation in certain areas. A network provider may not install a new support pole in a public ROW in a city park or next to certain streets around residential areas without the municipality's written consent. In designated historic districts or design districts with decorative poles, the network provider must receive approval from a municipality before installing new support poles or network nodes. A municipality may request compliance with design and aesthetic standards of the district.

Approval for a network node or transport facility may not be construed to authorize cable service or video service without complying with requirements for state-issued cable and video franchises or to authorize service in violation of federal law.

Design manual. A municipality may adopt a design manual for installing and building network nodes and support poles. A network provider must comply with a manual that was in place on the permit application date.

Supporters said

SB 1004 would provide the regulatory framework needed to develop the next step in faster, more efficient wireless broadband, which will evolve to 5G service in Texas cities. Wireless consumption has increased in recent years and will continue to grow, requiring investment in faster service.

As an improvement over the existing patchwork of different and confusing rules across cities, the bill would allow for a streamlined process through which network providers could build small cell nodes on municipally owned poles, helping companies expand 5G access statewide. Because many cities have not adopted policies for using small cell nodes, a statewide policy is needed to establish a fair and equitable framework.

SB 1004 would restrict construction of poles in certain residential, historic, and design districts. It would address potential risks of interference with traffic signals and other city infrastructure. Cities also could develop customized design manuals, allowing them to adopt policies according to their unique needs.

The bill is designed to ensure that certain companies do not receive an unfair advantage. Approval for installation would not authorize an entity to offer cable or video services without following the same requirements that apply to cable and video service providers.

The fees under the bill are at a level that would incentivize companies to provide small cell networks, creating more investment for technology and better wireless broadband service for consumers.

Opponents said

SB 1004 is unnecessary because many cities already work with network providers to allow access to poles and have agreements on the use of their infrastructure. The bill would take away a city's control of the use of rights-of-way (ROW) and its capacity to uphold safety and design standards. Cities would have to allow third-party access to traffic signals and other infrastructure, which could create risks to public safety in the event of electrical or other issues with network nodes.

The bill could give an unfair advantage to certain companies by allowing them to pay one rate for use of the ROW, while cable companies still would have to pay higher fees and regulatory costs for the same use.

The proposed fee for companies to access the ROW is too low and could incentivize some to build new poles for every small cell, potentially leading to a proliferation of unsightly poles in a city. Giving private companies access to publicly owned structures without charging enough to cover costs effectively would be a subsidy for network providers.

Notes

The HRO analysis of SB 1004 appeared in the May 17 *Daily Floor Report.*

Using U.S. iron and steel in state construction projects

SB 1289 by Creighton
Effective September 1, 2017

SB 1289 requires iron and steel products used in state construction projects to be made in the United States, unless:

- iron and steel products made in the United States are not produced in sufficient quantities, reasonably available, or of a satisfactory quality;
- use of iron or steel products made in the United States would increase the total cost of the project by more than 20 percent; or
- complying with this requirement would be inconsistent with the public interest.

Supporters said

SB 1289 would lead to job creation and growth in the steel and iron industries that have been hurt by unfair trade practices by requiring government projects to use American-made iron and steel. U.S. iron and steel companies are at a disadvantage competing against steel production in nations that heavily subsidize the industry. In addition, regulatory compliance costs significantly add to the cost of producing iron and steel in the United States, even as domestic production must compete with companies operating in countries with weak labor laws and lax environmental standards. Texas is therefore justified in preferring U.S. producers because the federal government is limited in the trade barriers it can establish.

Existing federal and state requirements similar to SB 1289 have not been shown to increase costs because several American-based companies are available to bid competitively on contracts.

Opponents said

SB 1289 would not be very effective because many of the iron and steel producers selected likely would have been chosen even without preferential treatment. It also could increase the cost of public projects that then must be passed on to Texans in the form of higher taxes. Texas should be as efficient as possible with its resources and cannot solve the far-reaching problem of unfair trade practices with this type of legislation.

The bill could lead to retaliatory laws passed by other countries, which would damage U.S. trade relations with other nations, along with the Texas economy. While some countries, such as China and India, have engaged in unfair trade practices, abuse on the part of international trade partners should be handled at the federal level, not the state level.

Notes

SB 1289 was not analyzed in a *Daily Floor Report.*

Civil Jurisprudence and Judiciary

* Finally approved

Prohibiting certain child support contempt findings

HB 161 by Dutton
Died in the Senate

HB 161 would have prevented courts from holding certain child support obligors in contempt for failure to pay child support during a period of confinement of at least 90 days in jail or prison.

The court could not have held the respondent in contempt if the respondent or the respondent's attorney had appeared at a hearing with evidence satisfactory to the court showing that:

- the unpaid portion had accrued during the respondent's period of confinement of at least 90 days for an offense other than family violence or failure to pay child support; and
- the respondent did not have the means to pay support while confined.

Supporters said

HB 161 would help resolve an unfair burden on those who accrue child support obligations while incarcerated. Incarcerated child support obligors currently may file for a modification in payments due to an inability to make them, but many are not aware of this and accrue significant obligations. They may then be found in contempt after they are released from confinement, which can lead to re-incarceration. The bill would allow individuals to defend against these actions by showing that they were unable to make payments while incarcerated.

The bill would allow parents and other obligors to reintegrate into society, find employment, and resume child support obligations. Many who leave prison owing child support arrears rarely pay what is owed, and their criminal record makes it difficult to find employment, particularly with a salary sufficient to cover the arrears. As a result, those owing large amounts of child support may flee, which hurts children and custodial family members and reduces the chance of the family ever receiving child support from that person. People reentering society after incarceration face many barriers, and this bill would remove one, while balancing the needs of the person owing child support with those to whom it is due.

The bill would require individuals asserting this defense to show that they were not incarcerated for harming the child or family to whom support was owed or for previously failing to pay child support. This would ensure that the bill did not benefit people who had harmed their families. HB 161 would require proof that the obligor had been unable to make payments while confined, as some individuals might have assets or other sources of income that would enable them to pay even while incarcerated.

Opponents said

HB 161, while well intentioned, would not adequately account for the consequences of such a change to families who depend entirely or in part on child support payments. Contempt is a powerful enforcement tool that is sometimes the only way to get obligors to make their payments. If this bill were enacted, large sections of prisoner populations would be effectively exempted from child support obligations by removing any meaningful enforcement mechanism.

Other opponents said

HB 161 should apply regardless of the reasons an obligor was incarcerated. Many people who go to jail because of failure to pay child support are not willfully avoiding child support payments, but simply are unable to make them. Holding them in contempt for arrears when they leave prison only exacerbates this situation. Even if a person were incarcerated for harming the family who was owed support, holding the obligor in contempt for support payments he or she might never be able to pay upon release would be a disincentive to making any payments at all, further harming the family.

Notes

The HRO analysis of HB 161 appeared in Part Two of the May 5 *Daily Floor Report.*

Continuing the State Bar of Texas

SB 302 by Watson
Effective September 1, 2017

SB 302 continues the State Bar of Texas until September 1, 2029, and amends several processes related to its functions.

Disciplinary rules committee. The bill creates the Committee on Disciplinary Rules and Referenda to regularly review the adequacy of the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure and oversee the initial process for proposing a disciplinary rule. The committee has nine members, including attorneys and non-attorney public members appointed by the president of the state bar and the Supreme Court of Texas. The initial members will be appointed by January 1, 2018.

Rulemaking process. The bill amends the state bar's rulemaking process and repeals related provisions. The Committee on Disciplinary Rules and Referenda may initiate the process for proposing a disciplinary rule either on its own or as prompted by the Commission for Lawyer Discipline, the Legislature, or a petition from the state bar or the public, among other entities.

The committee has 60 days to act on a request. After publication in both the *Texas Register* and *Texas Bar Journal* and a public comment period, a proposed rule may not be adopted unless approved by the committee, the board of directors, a majority of state bar members in a referendum, and the Supreme Court within certain time limits established in the bill. If a proposed rule is defeated, the rulemaking process may be reinitiated.

Attorney discipline system. Investigatory and disciplinary hearings may be held by teleconference. During investigation of a grievance and with approval of the presiding officer of the appropriate district grievance committee, the chief disciplinary counsel may issue a subpoena that relates directly to a specific allegation of misconduct. In establishing minimum standards and procedures for the attorney discipline and disciplinary system, the bill requires the Supreme Court to ensure that an attorney has an opportunity to respond to all allegations of misconduct.

The counsel must develop a process to identify a complaint that is appropriate for a settlement attempt or an investigatory hearing before a trial is requested or the complaint is placed on a hearing docket. A settlement may be authorized at any time during the disciplinary process.

The chief disciplinary counsel must create and maintain a system to track grievances and disciplinary decisions and must periodically report information gathered to the Commission for Lawyer Discipline and district grievance committee members. Information on rule violations or instances of ethical misconduct and the disciplinary action taken will be posted on the state bar's website.

The chief disciplinary counsel will regularly search a data bank maintained by the American Bar Association to identify members disciplined in other states. The counsel also must develop a procedure for an attorney to self-report a criminal offense and any disciplinary action taken by another state's bar.

Sanction guidelines. The Supreme Court must adopt sanction guidelines, provide factors that justify deviating from established sanctions, and provide consistency between complaints heard by a district grievance committee and complaints heard by a district court.

Online attorney profiles. The online profile of each licensed attorney must include all public disciplinary sanctions issued by the state bar with a link to the full text of any disciplinary judgment entered by a district grievance committee or district judge and any sanctions issued in another state, not just those issued within the previous 10 years.

Ombudsman for attorney discipline system. The Supreme Court must select and directly oversee an ombudsman for the discipline system, making the position independent of the state bar, the board of directors, the Commission for Lawyer Discipline, and the chief disciplinary counsel. The ombudsman may

not draft a complaint or act as an advocate for the public, reverse or modify a finding or judgment in a disciplinary proceeding, or intervene in any disciplinary matter. The ombudsman will, at least annually, make recommendations for improvements to the attorney discipline system.

Dispute resolution. The existing voluntary mediation and dispute resolution procedure may be used only to resolve minor grievances referred by the chief disciplinary counsel. The state bar must assist the Supreme Court with modifications to the Texas Rules of Disciplinary Procedure to establish a time limit for resolution or referral to the formal grievance process.

Commission for Lawyer Discipline. In its annual report, the Commission for Lawyer Discipline must provide data by race and gender and include the following information on barratry-related offenses:

- the number and final disposition of grievances filed, dismissed, and investigated and disciplinary decisions issued under the Texas Disciplinary Rules of Professional Conduct;
- the chief disciplinary counsel's cooperation with local, state, or federal agencies in the investigation or prosecution of civil actions or criminal offenses;
- barriers to investigation and prosecution under existing laws or enforcing rules; and
- recommendations for improving the discipline system, rules of conduct, or other state laws.

The commission must make a summary of this information available to the public to the extent allowable under confidentiality laws and rules.

Criminal history record information. The state bar may obtain criminal history record information relating to its members from the Department of Public Safety or the Board of Law Examiners and must obtain a criminal history record on each member whose information is already on file with either agency by September 1, 2018.

Admission to practice and religious belief. The Supreme Court must ensure that no rule governing the admission to the practice of law violates state religious freedom laws.

Membership fees. SB 302 requires the Supreme Court to carry out its duty to set membership and other fees during the state bar's annual budget process. Fee changes must be clearly described and included in the state bar's proposed budget. A fee increase may not take effect unless a majority of state bar members approved it in a referendum. Once every six years, the board of directors may increase the membership fee up to 10 percent without a referendum.

Supporters said

SB 302 would continue the State Bar of Texas for 12 years, demonstrating that Texas has a continuing interest in regulating attorneys and promoting legal professionalism. The bill also would take necessary steps to make the state bar more efficient and transparent, improve its rulemaking process, and strengthen its disciplinary process.

Disciplinary rules committee. State bar members are the best informed resource on the complexities of the law, so appointing attorneys to the Committee on Disciplinary Rules and Referenda would ensure the implementation of necessary regulatory measures to guide attorneys and protect the public.

Rulemaking process. Concerns have been raised that the state bar's current rulemaking process has not permitted meaningful updates in two decades and is ill-suited to the rapidly evolving practice of law. Further, it lacks transparency, accountability, and public participation, which impact the state bar's duties to protect the public and provide sound, ethical guidance to lawyers. The bill would improve the rulemaking process to ensure that all interested stakeholders, including the general public, have a clear role in developing rules.

Although some say the current referendum process is inefficient, by preserving the voting right of attorneys to approve disciplinary rule changes, the bill would maintain judicial review over rulemaking, following the model by which other occupational licensing agencies balance authority and interests.

Attorney discipline system. The bill would ensure that the chief disciplinary counsel had the authority needed to conduct effective investigations and resolve cases earlier to avoid litigation when appropriate.

By aligning with the American Bar Association's nationwide best practice for attorney discipline agencies, SB 302 would give the chief disciplinary counsel investigatory subpoena power, allowing for timely access to information needed to properly investigate grievances.

Admission to practice and religious belief. By protecting the ability of attorneys to act in accordance with sincerely held religious beliefs, SB 302 would help ensure a good match between attorneys and clients so that attorneys could, in good conscience, carry out their client's wishes.

Opponents said

SB 302 should be amended to improve disciplinary and rulemaking processes and to better protect the public.

Disciplinary rules committee. If the purpose of the disciplinary system is to protect the public, the state bar president should not be tasked with appointing members to the Committee on Disciplinary Rules and Referenda, which would signal to the public that lawyers are self-regulating. This appointment process also could result in biased selections.

Further, criminal defense lawyers should be considered for appointment because they historically have been excluded from such discussions. Criminal defense lawyers have unique needs and important perspectives on many ethical issues.

Rulemaking process. By preserving the untenable conflict between the state bar's mission of protecting the public and the self-regulation of attorneys, the bill would not go far enough to fix the state bar's rulemaking process. The referendum procedure for rulemaking is expensive and lethargic and should be replaced with a process overseen by the Supreme Court. The court's rulemaking process, with appropriate statutory guidance, would be more efficient and give the public greater confidence in the integrity of the profession's self-regulation.

Attorney discipline system. The powers of the disciplinary process with regard to investigative subpoena power should not be expanded without judicial oversight.

Admission to practice and religious belief. SB 302 inappropriately could lead to attorneys not agreeing to represent clients based on gender, religion, race, or sexual orientation.

Notes

The HRO analysis of SB 302 appeared in the May 15 *Daily Floor Report*.

Monitoring and reporting on guardianships

SB 667 by Zaffirini
Vetoed by the governor

SB 667 would have required the Office of Court Administration (OCA) to establish and maintain a Guardianship Compliance Program that provides resources and assistance to courts handling guardianship cases. The program would have been designed to assist courts by engaging guardianship compliance specialists and maintaining an electronic database to monitor guardians' required filings and annual reports. The specialists would have been required to:

- review guardianships and identify reporting deficiencies;
- audit required annual filings;
- work with courts to develop best practices in managing guardianship cases; and
- report to the appropriate court any concerns relating to a ward's well-being or to the existence of potential financial exploitation.

The bill would have required a court to participate in the program if OCA selected it for participation. A court also could have applied to participate. If a participating court acted or failed to act on a guardianship compliance specialist's report of concern and the office had reason to believe that such action or non-action constituted judicial misconduct, the OCA's administrative director could have notified the State Commission on Judicial Conduct.

OCA would have been required to submit a performance report on the program to the Legislature by January 1 of each year. The report would have included the number of courts involved in the program, guardianships reviewed, guardianships found to be out of statutory compliance, cases reported to a court because of concerns about the well-being or potential financial exploitation of wards, and the status of monitoring technology developed for the program.

Supporters said

SB 667 would implement a 2016 recommendation of the Texas Judicial Council's Elders Committee to expand the Office of Court Administration's (OCA's) Guardianship Compliance Project to cover more of the 244 Texas counties without statutory probate courts. OCA's pilot program revealed deficiencies in courts without sufficient resources to effectively monitor guardianship cases.

By expanding the program, the bill would help protect a growing population of vulnerable Texans. Guardians in Texas currently manage about $5 billion in assets. Only 10 counties have statutory probate judges who are specialists in the Estates Code and guardianship filings. In the remaining counties, most courts cannot afford to hire staff dedicated to guardianship cases and may not have expertise in such matters.

Making the program available to more courts across the state would provide resources and assistance to judges in overseeing a guardian's compliance with statutory requirements and would bring attention and expert technical assistance to situations as needed.

Opponents said

The program would create an unnecessary layer of government whose oversight activities would cost about $5 million per fiscal biennium. Guardianship issues can be settled between the court and the guardians, and Texas should allow other reforms enacted by the 85th Legislature a chance to work before seeking to create a new bureaucratic entity.

Notes

The HRO analysis of SB 667 appeared in Part Two of the May 16 *Daily Floor Report.*

The 85th Legislature enacted other bills related to guardianship, including **SB 1096** by Zaffirini, effective September 1, 2017, which sets registration, training, and other standards for certain guardians and requires the creation of a central database of guardianships in Texas. The HRO analysis of SB 1096 appeared in the May 18 *Daily Floor Report.*

SB 1559 by L. Taylor, effective September 1, 2017, exempts active military and first responders who became incapacitated as a result of injuries sustained in the line of duty from certain guardianship fees. The HRO analysis of SB 1559 appeared in Part Two of the May 22 *Daily Floor Report*.

SB 1709 by Zaffirini, effective June 15, 2017, requires relatives to elect to receive information on a ward's health and residence from a guardian. The HRO analysis of SB 1709 appeared in Part Three of the May 22 *Daily Floor Report*.

SB 1710 by Zaffirini, effective September 1, 2017, revises requirements related to the process of restoring a ward's legal capacity or modifying a guardianship. The HRO analysis of SB 1710 appeared in Part One of the May 22 *Daily Floor Report*.

Court fines and costs

SB 1913 by Zaffirini
Generally effective September 1, 2017

SB 1913 revises court procedures to assess and collect fines and court costs for criminal defendants who are unable to pay.

Imposing, waiving court fines, costs. SB 1913 requires courts, including justice and municipal courts, imposing a sentence after a plea in open court to ask whether the defendant has the resources or income to immediately pay fines and court costs. If a court determines that a defendant does not have the resources, it is required to determine whether fines and costs should be paid at a later date or in payments, discharged through community service, waived, or a combination of these methods.

The bill allows courts, including justice and municipal courts, to waive payment of all or part of fines or costs for defendants who are indigent or have insufficient resources or income to pay. Under the previous standard, the court could not waive payment by an indigent defendant unless the defendant had defaulted. SB 1913 requires that defendants who are unable to pay receive information on certain citations and other notices about alternatives to the full payments of fines and court costs.

Capias pro fine. Courts, including justice and municipal courts, are prohibited from issuing a capias pro fine to bring a defendant to court for a defendant's failure to pay a judgment for fines and costs unless the court held a hearing on the defendant's ability to pay and certain conditions were met. The defendant must fail to appear at the hearing or, based on evidence presented at the hearing, the court must determine that the capias pro fine should be issued. The court must recall a capias pro fine if the defendant voluntarily appears and resolves the amount owed.

Arrest warrants, bonds in justice and municipal courts. Justice and municipal courts are prohibited from issuing arrest warrants for a defendant's failure to appear at the initial court setting unless certain conditions are met. A warrant may be issued only if the defendant received notice that includes specific information outlined in the bill, including information about alternatives to the full payment of fines and costs. An arrest warrant must be withdrawn if a defendant voluntarily appears and makes a good faith effort to resolve the warrant.

The bill revises provisions dealing with the issuance of bonds by justice and municipal courts. It authorizes courts to require defendants in fine-only misdemeanor cases to give personal bonds and allows courts to require bail bonds only under certain circumstances. Bail bonds may be required only if the defendant failed to appear and the court determined that the defendant had sufficient resources to post a bond and a bail bond was necessary to secure a defendant's appearance in court. A court must reconsider the requirement for the bail bond if 48 hours after requiring the bond, the defendant had not posted it. In these situations, the court would presume the defendant did not have sufficient resources or income for the bond and could require a personal bond.

Other provisions. SB 1913 contains several other provisions, including expanding options for community service and raising the rates at which certain defendants are credited for jail time and labor at certain work programs to discharge fines and costs. The bill also revises Transportation Code provisions dealing with registering vehicles and denying driver's licenses due to past due fines or fees or failure to appear in court.

Supporters said

SB 1913 would revise the way courts handle defendants who cannot pay court costs and fines so that defendants could be held accountable in a fair way that would not further a cycle of debt and involvement with the criminal justice system. Many courts in Texas already implement provisions of the bill, but SB 1913 would export these best practices statewide. Currently, when low-income Texans are unable to pay court fines and costs assessed for traffic tickets and other low-level, fine-only offenses, they can become trapped in a cycle of debt, arrest warrants, jail time, license suspensions, and more. This can result in job losses and harm to family and educational obligations.

Under the bill, a judge would be required to ask in certain cases whether a person had the resources to pay court fines and costs immediately after imposing a sentence, rather than waiting for the defendant to default on something he or she never had the ability to pay, triggering other consequences. Courts would receive additional tools to satisfy costs and fines, including more options when waiving fines and costs and for community service. Individuals still would have to complete community service at organizations determined by the court to provide public services that enhance social welfare and community well-being. The bill would require the inclusion of standard language in court notices so that defendants knew that non-monetary options were available to satisfy fines and costs.

SB 1913 would encourage defendants to come to court to clear up traffic tickets and other obligations by prohibiting arrest warrants for failure to appear unless certain conditions were met and requiring arrest warrants to be withdrawn upon voluntary appearance and a good faith effort to answer to the court. Other changes would encourage justice and municipal courts to require personal bonds of defendants, rather than bail bonds, so that defendants are not kept in jail because they could not pay fees and costs. Other provisions aim to help defendants continue to drive legally even if they could not pay court fines and costs, which would avoid unnecessarily disrupting a defendant's life.

Opponents said

Under current law, in most cases, indigent defendants can explain to a court that they are unable to pay fines that have been assessed, and the court will work with them and may order community service. Even incremental changes to this system could contribute to a culture in which there was decreased incentive to comply with the law. The bill's expansion of community service options could go too far in allowing service to be performed at organizations that are not government entities or certain types of non-profits.

Notes

The HRO analysis of SB 1913 appeared in Part One of the May 22 *Daily Floor Report.*

HB 351 by Canales, as passed by the House, allowed courts at sentencing or any time after sentencing to require defendants unable to pay fines and costs to perform community service. HB 351 was amended by the Senate to include numerous provisions identical and similar to those in SB 1913 and went into effect September 1, 2017. The HRO analysis of HB 351 appeared in the March 22 *Daily Floor Report.*

Criminal Justice and Public Safety

* Finally approved

Raising the age of adult criminal responsibility

HB 122 by Dutton
Died in the Senate

HB 122, as passed by the House, would have raised the age of adult criminal responsibility in Texas from 17 to 18 years old, placing 17-year-olds accused of crimes in the juvenile rather than the adult justice system. Juvenile courts would have had jurisdiction over youths who committed offenses before their 18th birthday, and adult courts would have had jurisdiction over those who committed offenses on or after their 18th birthday.

The bill also would have made conforming changes to offenses in which the age of the offender was a factor and amended certain criminal procedures and juvenile court procedures. HB 122 would have required the Texas Juvenile Justice Board to appoint an advisory committee to study implementation of the change and analyze anticipated costs. The bill would have taken effect September 1, 2021.

Supporters said

By raising the age of adult criminal responsibility to 18 years old, HB 122 would improve public safety, create better outcomes for youths, yield long-term economic benefits, and better conform Texas law with national trends in juvenile justice. Under current law, the state holds 17-year-olds accountable for criminal actions as if they were adults, while not allowing them to vote, serve on a jury, or buy tobacco, alcohol, or lottery tickets. HB 122 would put Texas in line with U.S. Supreme Court rulings that have recognized differences between children and mature adults. Forty-four other states have set the age of adult criminal responsibility at 18 years old, according to the National Conference of State Legislatures.

With the bill taking effect in 2021, the state and counties would have time to plan the transition, and by requiring a study on costs, the 86th Legislature would have time to make any necessary adjustments to the law in 2019.

Public safety. Moving 17-year-olds to the juvenile justice system from the adult system would enhance public safety because youths are more likely to be rehabilitated in the juvenile system. Education, treatment, and services in the juvenile system focus on rehabilitation, take into account adolescent development, and involve the family, while the adult system often focuses on punishment. Most offenses by 17-year-olds are non-violent low-level, misdemeanors that do not warrant the adult system's severe sanctions.

The juvenile system is equipped to handle all types of young offenders with a range of sanctions, from pre-trial diversion to probation, and may include confinement in local or state facilities. State-run juvenile facilities offer intensive specialized treatment, including programs for youths who commit murder or other violent offenses.

Public safety would be maintained if Texas raised the age of criminal responsibility because, under certain conditions, 17-year-olds accused of serious crimes still could be certified by courts to be tried and sentenced as adults.

Outcomes for youth. HB 122 would improve the lives of offenders and recognize scientific studies that show teenage brains still are maturing and that teenagers can exhibit increased risk taking and poor decision making and impulse control. However, teenagers are malleable and have potential for rehabilitation, making it appropriate for them to be in a system with services, education, and support specifically designed for them. They would continue to be held accountable for their actions but in a system designed to protect and rehabilitate them and to ensure they had help understanding legal proceedings and consequences. The bill also would ensure that, unlike in the adult system, youths' families were involved.

Seventeen-year-olds would be better protected in the juvenile system, and those sent to local or state facilities could be housed and treated without endangering younger offenders. By contrast, youths in adult facilities are at high risk of physical assault, sexual abuse, and mental health problems. Outcomes for 17-year-olds also would improve if they were kept out of local adult jails, which lack appropriate programs and

often struggle to meet federal standards under the Prison Rape Elimination Act (PREA) requiring the separation of 17-year-olds from older offenders without isolating them.

Raising the age also would help older youths by allowing their records to remain private in the juvenile system, giving them a better chance of moving past their brushes with the law.

Costs. Raising the age could result in long-term economic benefits because the juvenile system has a better record than the adult system of reducing recidivism, resulting in fewer future crimes. While cost per day of supervision may be more in the juvenile system, lengths of stay often would be shorter, reducing overall costs.

The costs of raising the age could be less than some estimates. Given the frequency with which youths receive probation in the juvenile system, some of the 17-year-olds currently sentenced to adult correctional facilities instead could be placed on probation and kept locally or diverted from the criminal justice system, which would cost less. The juvenile system already supervises offenders as old as 19, and current education, vocation, and career programs used for them could be modified or expanded.

Other states that have raised the age have found it less costly than predicted, with no spike in juvenile corrections costs. Some of the estimated costs for implementing HB 122 reflect expenses, such as new facilities, that may occur regardless of the bill. Raising the age would help reduce costs to local jails and the state of complying with federal standards under PREA, including the sight and sound separation standards. Counties also could incur costs if noncompliance with PREA were raised in a lawsuit against them.

Opponents said

HB 122 inappropriately would alter the current system, which has worked well for both the public and 17-year-olds. Most 17-year-olds receive probation in the adult prison system, and the adult system operates a youthful offender program designed for them. While 17-year-olds may need services for their age group, this can be done in the adult system, rather than altering Texas' juvenile justice system.

Public safety. Placing all 17-year-olds in the juvenile system could make it difficult to hold them appropriately accountable for their crimes. Seventeen-year-olds are old enough to understand the consequences of their actions, and the adult system provides a range of sanctions to handle them properly. Options include pre-trial diversion, deferred adjudication, probation, fines, and state jail or prison terms, which allow the punishment to fit the individual and crime.

Simply shifting the age of court jurisdiction by one year would not necessarily result in less crime or fewer victims. Many things contribute to crime rates, including social, economic, and other factors, as well as decisions made by law enforcement officers, prosecutors, and courts.

Outcomes for youth. Moving 17-year-olds to the juvenile system could have a negative impact on younger youths. It could result in 17-year-olds entering a juvenile system that in recent years has dealt with scandals, reorganization, implementation of a regionalization plan, and allegations that some juvenile facilities are unsafe for youths and staff. Younger youths in juvenile settings, which are more informal, could be endangered or influenced by the influx of 17-year-olds, some of whom would have been involved in serious crimes. Many younger youths also have serious and complicated mental health and other needs that may not be helped by the addition of 17-year-olds to the juvenile system.

The rehabilitation needs of 17-year-olds may be more aligned with those in the adult system than with younger offenders in the juvenile system. Any other needs could be met by treating them as a unique group within the adult system, rather than moving them to the juvenile system, which might not provide the type of programs these offenders need.

Costs. Raising the age could be costly. Thousands of 17-year-olds entering the juvenile system could strain juvenile courts, local juvenile probation systems, and juvenile facilities. Costs of supervision and programs in the juvenile system, due to their intensiveness, are higher than those in the adult system, and keeping probation caseloads low could be costly. These offenders may have challenging mental health and behavioral issues and may need new programs focused on job training and life skills to transition to adulthood.

While the fiscal note for HB 122 estimates no state cost in fiscal 2018-19, costs would increase significantly after that when the bill's main provisions took effect, at about $46 million the first full biennium of implementation and $35.1 million the next year. This estimate does not include potentially significant costs for probation, including mental health, substance abuse, or other specialized services, according to the fiscal note. In addition, the cost estimates reported in the fiscal note varied among counties, with one estimating a $15.4 million cost soon after implementation, including the cost to build a 40-bed facility, and another estimating an ongoing biennial cost of $452,852.

Notes

The HRO analysis of HB 122 appeared in the April 20 *Daily Floor Report*.

Applying handgun laws to volunteer first responders

HB 435 by K. King
Effective September 1, 2017

HB 435 creates a defense to prosecution for handgun license holders who are voluntary emergency personnel for offenses in Penal Code, secs. 30.06 and 30.07, which make it a crime for a license holder either to conceal or openly carry a handgun on property on which it is known to be forbidden. "Volunteer emergency services personnel" is defined to include any individual who voluntarily provides services for the public during emergencies, including a volunteer firefighter and an emergency medical services volunteer.

For volunteer emergency services personnel engaged in providing emergency services, the bill also provides a defense to prosecution for offenses in Penal Code, secs. 46.035(b) and 46.035(c), which prohibit license holders from carrying a handgun at a business that derives at least 51 percent of its income from alcohol sales, at an amateur or professional sporting event, at a correctional facility, at a hospital or nursing facility, in an amusement park, at a place of worship, or at an open government meeting.

The bill also adds volunteer emergency services personnel who are licensed to carry a handgun and engaged in providing emergency services to the list of individuals to whom offenses in Penal Code, secs. 46.02 and 46.03 do not apply. This allows volunteer emergency services personnel who are licensed to carry a handgun to do so while performing official duties on the premises of a school, polling place, courthouse, racetrack, secure area of an airport, and a designated place of execution. They also may have a handgun in plain view inside a motor vehicle or watercraft that they own so long as the handgun is carried in a shoulder or belt holster.

Under the bill, the discharge of a handgun is outside the course and scope of an individual's duties as volunteer emergency services personnel. A governmental unit is not liable in a civil action arising from the discharge of a handgun by licensed volunteer emergency services personnel. This may not be construed to waive the immunity from suit or liability of a governmental unit under any law.

HB 435 allows the 10 state psychiatric facilities to prohibit a license holder from entering the property while carrying a handgun. It requires them to post written notice with a sign on the property that meets certain conditions listed in the bill. A license holder found in violation of the sign is liable for a civil penalty of $100 for the first violation or $500 for subsequent violations.

The bill also extends to the attorney general, assistant attorneys general, U.S. attorneys, and assistant U.S. attorneys certain handgun laws that apply to specific judicial officers and district attorneys.

Supporters said

HB 435 would provide certain legal protections to volunteer emergency services personnel who are licensed to carry a handgun, allowing them to reduce potentially dangerous delays in rendering aid caused by having to store their handguns before entering certain premises.

Rural areas in Texas often rely on volunteer firefighter and emergency medical services. These personnel often are the first to respond in emergencies because the closest law enforcement support may be many minutes away. The bill would prevent delays in the event volunteer emergency services personnel showed up for emergency duty with a handgun already on them.

The bill would not confer additional authority to volunteer emergency services personnel. It would not grant them the powers and responsibility of law enforcement to secure a site or, if necessary, discharge a handgun in response to an incident. HB 435 also would not require volunteer emergency personnel to obtain a handgun license, nor would it require those already licensed to carry a firearm. The bill only would ensure that volunteer emergency service personnel did not have to worry about the legality of carrying a weapon based on where an emergency was located, thereby reducing response time.

Opponents said

It is unclear whether HB 435 would allow local department chiefs to retain local control. Individual departments should be able to decide if carrying a handgun is appropriate in their communities, and if so, when and where personnel may carry.

The bill unintentionally could change the perception of first responders. Traditionally, first responders have been seen as helpers in the community. However, by allowing them to carry handguns while performing their duties, it could introduce an element of fear or anxiety among some people about the presence of volunteer first responders.

It is concerning that under the bill, armed volunteer emergency services personnel could find themselves in unpredictable situations and make potentially rushed decisions. Emergency services personnel do not receive the training required of law enforcement regarding decision-making as it relates to the use of force.

Notes

The HRO analysis of HB 435 appeared in appeared in Part Three of the May 2 *Daily Floor Report*.

The 85th Legislature also considered **HB 56** by Flynn, which would have allowed a licensed first responder under certain circumstances to carry a handgun while engaged in the discharge of duties. "First responder" would have included any federal, state, local, or private personnel who respond to a disaster in the scope of employment. HB 56 died in House Calendars.

Fine-only misdemeanors

HB 574 by S. Thompson
Died in the House

HB 574 would have prohibited a peace officer or any other person without a warrant from arresting an offender who committed one or more offenses punishable by a fine only, but excluding public intoxication, unless the officer or person had probable cause to believe that:

- the failure to arrest the offender would create a clear and immediate danger to the offender or the public or would allow a continued breach of the public peace; or
- the offender would not appear in court in accordance with the citation.

An unpaid fine from a previous fine-only misdemeanor would not have constituted probable cause to believe that the offender would fail to appear. The bill would have required officers to issue a written notice to appear for all fine-only misdemeanor traffic offenses, not just speeding or a violation of the open container law.

The Texas Commission on Law Enforcement (TCOLE) would have been required to adopt by January 1, 2018, a written model policy on the issuance of citations for fine-only misdemeanor offenses, including traffic offenses. The policy would have provided a procedure for a peace officer to verify a person's identity and issue a citation. TCOLE would have had to develop the policy in consultation with law enforcement agencies, associations, and training experts and community organizations engaged in the development of law enforcement policy. Each law enforcement agency would have been required to adopt either the model policy or another policy that met the same requirements.

A law enforcement agency would have been required to maintain a record of a warrantless arrest for a fine-only misdemeanor offense for at least one year after the date of the arrest. The record would have included the arresting officer's justification for the arrest. Unless otherwise provided by law, these records would not have been confidential and would have been subject to disclosure under public information laws.

Supporters said

HB 574 would address concerns that arresting people for minor, fine-only offenses unnecessarily expends resources while not significantly contributing to public safety. Under the bill, police officers would be limited in their ability to arrest an offender for fine-only misdemeanors, which would help ensure that punishment was proportional to the crime. A person arrested for such offenses is subject to more severe penalties, including jail time, additional costs, and potential trauma, which could be avoided if the person simply paid the fine upon conviction after being cited and released. By requiring law enforcement agencies to adopt local cite-and-release policies, HB 574 would reduce the frequency with which officers expend more resources on an arrest than on issuing a citation.

The bill would reduce the number of short-term detainees in jails, which strains resources and unnecessarily costs taxpayers money. Local jurisdictions pay hundreds of dollars for each person arrested to go through booking and a jail-intake processes. Jails then must devote resources and space to house these individuals until their release. The time from booking to release can range from hours to days, expending resources the entire time.

Taking people into custody can be risky or escalate a situation, resulting in potential harm to an officer or a person. Further, a broad range of conduct falls into the category of fine-only misdemeanors, and such unbounded discretion given to law enforcement carries with it potential for abuse. Eliminating arrests that stem from minor offenses could reduce the possibility of dangerous interactions between police and civilians, making traffic stops safer for all involved.

HB 574 would not remove all discretion from police officers because an officer still could arrest a person for a fine-only misdemeanor if the officer had probable cause to believe that doing so would be in the public interest. Texas law already prohibits an officer from arresting a person for speeding; this bill simply would make that practice uniform for other minor traffic violations and nonviolent, fine-only misdemeanors.

Opponents said

HB 574 would deprive law enforcement of an important tool. Under current law, a police officer may arrest an offender without a warrant for any offense committed in the officer's presence or within the officer's view. Law enforcement uses this discretion with intent and purpose, not malice, and these arrests often result in leads on more serious or violent crimes. Although there may be officers who abuse this tool, there are already measures in place to handle such situations. This bill would go too far and could impede officers' duties to enforce the state's laws and protect the public.

Notes

HB 574 was placed on the General State Calendar on May 10. It was not considered on second reading and did not appear in a *Daily Floor Report*.

Punishing crimes against peace officers and judges

HB 2908 by Hunter
Effective September 1, 2017

HB 2908 amends the Texas hate crime statute to make certain crimes committed because of bias or prejudice against someone's status as a peace officer or judge qualify for enhanced penalties. This applies to the offenses against people listed in Penal Code, Title 5, as well as arson, criminal mischief, and graffiti.

For the following crimes against public servants, the bill raises the penalty by one step for an offense knowingly committed against a peace officer or a judge so that:

- unlawful restraint of a peace officer or judge is a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) if the crime occurred while the officer or judge was lawfully discharging official duties or in retaliation or on account of those duties;
- assault of a peace officer or judge is a second-degree felony if the person assaulted was an officer or judge discharging official duties or in retaliation or on account of the duties; and
- making certain terroristic threats against a peace officer or judge is a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000).

The bill raises the penalty for intoxication assault against a peace officer or judge discharging official duties from a second-degree felony to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to $10,000) if the peace officer or judge sustained serious bodily injury as a result.

Supporters said

HB 2908 would help protect Texas peace officers and judges from being harmed because of their service to the community and would encourage a culture of respect for these officials. Peace officers and judges who risk their lives to serve the community in turn deserve the protections in the bill. Texas law regularly provides enhanced penalties for crimes committed against certain victims, and no one deserves this more than peace officers and judges.

Law enforcement officers and judges increasingly are being targeted because of their role as public servants. Tragic examples of these officials coming to harm because of their station include the Dallas police officers wounded and killed in 2016 and the recent shooting of a judge in Austin. The bill would address this issue by making sure the bias or prejudice behind a crime against an officer or judge was considered appropriately.

HB 2908 would be consistent with Texas hate crimes laws and other laws that enhance penalties when certain crimes are committed against victims or groups that need and deserve special protection. Crimes against peace officers and judges, just like other hate crimes, affect all of society. Peace officers and judges hold a unique place in society, making the enhanced penalties in the bill appropriate.

Opponents said

Texas already has an enhanced penalty for murder of a peace officer and higher penalties when certain crimes are committed against public servants. Victims should receive equal protection, and expanding Texas' hate crime statute to one class of public servants could lead to abuse and calls to do the same for other groups. In general, hate crime laws should be reserved for things that are innate parts of an individual's identity and not for occupations.

Notes

The HRO analysis of HB 2908 appeared in Part Four of the May 8 *Daily Floor Report.*

Prohibiting certain local policies on immigration law

SB 4 by Perry
Effective September 1, 2017

SB 4 prohibits local government entities and campus police from adopting certain types of policies, patterns, or practices that prohibit the enforcement of state or federal immigration law. It establishes a process for handling complaints about violations of these provisions and requires law enforcement agencies to comply with federal requests to detain certain individuals. It also authorizes community outreach policies, establishes a grant program to aid local entities with enforcing the bill, and amends procedures relating to bail bonds in certain cases where lawful presence in the country is an issue. Local entities include the governing bodies of cities, counties, and special district authorities and divisions, departments, or other bodies that were part of these entities and certain officers and employees of them.

Local policies. Local entities and campus police may not adopt, enforce, or endorse policies that prohibit or limit the enforcement of immigration laws or have patterns or practices that prohibit or limit the enforcement of immigration laws. Specifically, local entities and campus police departments may not prohibit or limit peace officers, corrections officers, booking clerks, magistrates, or prosecutors from:

- inquiring about the immigration status of a person lawfully detained or arrested;
- exchanging with federal officials immigration information about a person lawfully detained or arrested;
- maintaining the information or exchanging it with other local entities, campus police departments, or federal or state government entities;
- assisting or cooperating with federal immigration officers as reasonable and necessary, except that entities may prohibit employees from assisting federal immigration officers at places of worship; and
- allowing federal immigration officers to conduct enforcement activities at jails.

Local entities and campus police departments and their employees may not consider race, color, religion, language, or national origin when enforcing immigration laws, except as allowed by the state or federal constitutions.

These prohibitions on policies do not apply to:

- certain local hospitals or hospital districts to the extent that they are providing medical or health care services as required under relevant state or federal laws;
- peace officers working for or commissioned by a hospital or hospital district;
- local public health departments;
- local mental health authorities and mental health community centers;
- school districts or open-enrollment charter schools; and
- peace officers employed or contracted by religious organizations.

Violations of these provisions by local public officials holding elective or appointed offices could result in removal from office.

When investigating a crime, a peace officer may ask about the immigration status or nationality of a witness or victim only if necessary to investigate the offense or give the witness or victim information about federal visas designed to protect individuals who assist law enforcement. A peace officer is not prohibited from asking about nationality or immigration status of a crime victim if there was probable cause to believe the victim or witness committed a separate crime.

The governor's criminal justice division must create a grant program to help cities and counties offset costs related to enforcing immigration laws and complying with federal detainer requests.

Violations, complaints. A citizen living in a local entity's jurisdiction or enrolled in or employed by a higher education institution may file a complaint about a violation of SB 4 with the attorney general. Upon determining that a complaint is valid, the attorney general may sue entities or departments to compel compliance with the law. Local entities or campus police departments that intentionally violate the bill are

subject to civil penalties of $1,000 to $1,500 for the first violation and $25,000 to $25,500 for subsequent violations with each day of a continuing violation being a separate violation.

Federal detainer requests. A law enforcement agency must take certain actions when it has custody of someone subject to a detainer request issued by a federal immigration official, including complying with the request. An agency does not have to detain a person holding proof of U.S. citizenship or lawful immigration status, such as a Texas driver's license or similar government-issued identification.

SB 4 requires the attorney general, if requested, to defend local entities in lawsuits related to their good-faith compliance with federal immigration detainer requests. In these cases, the state is liable for any expenses and settlements.

The bill creates a new crime for law enforcement authorities who knowingly fail to comply with immigration detainers. It is a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) for a sheriff, police chief, constable, or a person with primary authority for administering a jail to knowingly fail to comply with a federal immigration detainer request.

Community outreach policies. SB 4 allows law enforcement agencies to adopt community outreach policies to educate the public that peace officers may not inquire into the immigration status of crime victims or witnesses unless certain conditions are met. Policies must include outreach to victims of family violence and sexual assault.

Bonds. The bill would create a new circumstance under which a bail bond surety is not relieved of its responsibility for an accused person incarcerated in federal custody if that person is being held to determine the person's lawful presence in the United States.

Supporters said

SB 4 would enhance public safety by ensuring that local entities do not have policies or practices that prohibit the enforcement of immigration law and would make sure that local officials worked with federal authorities to keep dangerous criminals off Texas streets. The state needs to prevent cities — sometimes called sanctuary cities — and other local entities from having policies or practices that prevent law enforcement officers from asking questions or taking actions related to immigration law. Texas law enforcement authorities should not be able to choose which laws they enforce, and there should not be even a perception that Texas law enforcement officers are hamstrung from enforcing immigration laws. SB 4 should not affect the vast majority of cities and entities in Texas, most of which report to be in compliance with its provisions.

Local policies. SB 4 would enhance public safety by ensuring law enforcement officers in Texas worked under standards that did not restrict them from upholding state and federal immigration laws. The bill would not take away local entities' control over their law enforcement officers but would ensure officers could protect the public. It would allow law enforcement officers to ask questions about the immigration status of those who were lawfully detained as well as those who were arrested so that officers could do their jobs as they considered appropriate without being hindered by policies that restrict questioning of those under detention. Under SB 4, Texas peace officers would not be required to act as immigration agents, to determine anyone's immigration status, or to deport anyone. To comply with the bill, local entities simply would have to refrain from adopting or practicing certain policies.

SB 4 would not harm law enforcement officers' relationships with the public but instead would help make communities safer for everyone. The bill is focused on allowing officers to do their jobs investigating crimes and would protect relationships with local communities by restricting inquiries about the immigration status of witnesses and victims. SB 4 would address concerns about misinformation in communities by authorizing community outreach programs. A safer community helps everyone and supports those who contribute positively to our economy.

The bill would include several important exceptions, including for hospitals and peace officers working for them, local public health departments, schools, and peace officers working for religious organizations. SB 4 would include campus police because they should work under the same policies as other law enforcement officers.

SB 4 would not lead to racial or other profiling. The bill explicitly says that entities could not consider race, color, religion, language, or national origin when enforcing immigration laws, except as allowed by the state and federal constitutions. Under Texas law, peace officers may not engage in racial profiling, and all law enforcement agencies must have policies prohibiting officers from engaging in this activity.

SB 4 would support communities and law enforcement agencies by establishing a grant program to offset costs of complying with the bill.

Violations, complaints. Allowing the attorney general to sue entities that violated SB 4's provisions would give the law some teeth and provide a way for it to be enforced consistently throughout Texas. The bill would use civil penalties assessed by courts so that the consequences for violations would fall on the entity adopting the illegal policy.

Federal detainer requests. SB 4 would enhance public safety and support the work of federal authorities by requiring law enforcement agencies to honor federal detainer requests. After an arrest, local law enforcement agencies send the arrestee's fingerprints to the FBI, which sends the information to U.S. Immigration and Customs Enforcement (ICE). ICE may request that a jail hold an inmate suspected of being in the country illegally up to 48 hours after the person otherwise would have been released.

Not honoring these detainer requests places the public in danger by allowing criminals to return to the community and has resulted in serious crimes committed by individuals subject to detainers. This process would not have to disrupt local criminal prosecutions, and local authorities who are cooperating with ICE would be in a better position to resolve any issues before a defendant was deported.

Complying with detainer requests should not strain resources of local entities, and the bill would establish a grant program that could be used if it did. Most local entities report complying with detainer requests now, so SB 4 should not increase their costs.

The misdemeanor offense that SB 4 would create for sheriffs, police chiefs, and constables who failed to comply with federal detainer requests would be an important enforcement tool directed at those responsible for not complying with the detainers. The bill would allow those who refused to comply with detainers to be removed from office so that the non-compliance would cease and the public could be protected.

SB 4 contains important safeguards for U.S. citizens and local entities. A person subject to a detainer but able to provide proof of citizenship would not have to be held. Honoring the detainer requests is legal and constitutional, and SB 4 would allow local entities accused of holding someone in error to turn to the attorney general for legal defense.

Community outreach policies. SB 4 would support efforts by local law enforcement agencies to educate communities so that victims and witnesses knew that they could call peace officers without fear of their immigration status being an issue. The bill would authorize community outreach policies on this topic and ensure that the policies included victims of family violence and sexual assault.

Bonds. SB 4 would address unique circumstances surrounding bonds and illegal immigrants by establishing certain circumstances under which bond sureties were not relieved of liability. In some cases, bond sureties know that a person is under a federal detainer request and require all or most of the bond money up front. Currently, when federal authorities pick up the person, the surety might keep the funds and be relieved of liability. This bill would address these abuses by making bondsmen unable to be relieved of their liability if an individual was in federal custody to determine whether the person was lawfully in the United States.

Opponents said

SB 4 would interfere with the authority of local law enforcement authorities to set policies for their communities, which could make them less safe. Immigration law already is being appropriately and adequately addressed in Texas, and local law enforcement agencies work with federal officials to keep their communities safe and to handle undocumented persons.

Local policies. SB 4 would undermine local control of Texas law enforcement agencies by restricting the policies local entities could enact. Some may have policies that limit law enforcement officers' questions about immigration or other policies in an effort to keep

officers focused on crimes, not federal immigration law, much of which is civil. Local authorities, not the state, should decide the priorities and actions for local law enforcement officers.

The inclusion of campus police in SB 4 would foster fear and anxiety at Texas institutions of higher education. Many immigrant students work hard to earn degrees and make positive contributions to their institutions and the state, and they should feel safe on their campuses. This bill could result in minor legal infractions resulting in deportation.

SB 4 would harm the trust and good relationships necessary for law enforcement officers to operate successfully in the community if officers were perceived to be enforcing immigration law. Crime victims and witnesses would be less likely to call police or to cooperate with them if they feared that actions might result against them or their families, friends, or neighbors for immigration violations. This, in turn, could endanger the community if perpetrators go free. Workers who were not in Texas legally could become robbery targets on payday and be afraid to draw attention to themselves by reporting the crime.

SB 4 would go too far by allowing peace officers to ask about the immigration status of those who were lawfully detained as well as those who are arrested. This could push law-abiding immigrants into the shadows and make them fearful of contact with local law enforcement authorities. It also could trigger racial profiling and concerns about this activity. Immigrants, like everyone else, should be treated with dignity and are an important part of Texas and its economy. The state should not impose barriers to their productive participation in society.

While SB 4 would create a competitive grant program to offset some of the bill's cost to local entities, there is no guarantee that all entities would receive the support they needed.

Violations, complaints. The civil penalties contained in SB 4 could go too far in penalizing local entities and authorities. Immigration law is complex, and without the necessary expertise, cities, counties, and other entities could have difficulty complying with the bill's provisions, and state judges could struggle with interpreting federal immigration law. The state simply could set policies in this area without imposing penalties, which would be paid by local taxpayers who may have no direct control over the actions of local authorities.

Federal detainer requests. SB 4 would interfere with local authority to set policies that best suit particular communities by mandating that local law enforcement agencies honor all detainer requests. Federal detainer requests are not mandatory, and questions have been raised about the constitutionality of holding persons without a warrant. Local authorities may believe that it is best to have a policy of complying with all detainer requests for those accused of serious or violent crimes while reviewing other requests and allowing judges to make decisions about who could be released safely to communities. Honoring all detainers could strain local resources and interfere with the prosecution of crimes if defendants were released into federal custody before their cases were resolved.

Establishing a new criminal offense for sheriffs, police chiefs, constables, and others who failed to comply with detainer requests and allowing these officials to be removed from office would inappropriately infringe on the ability of local officials to set priorities for their communities.

Bonds. SB 4 should include language that would require sureties to know that someone was under a federal detainer request before being subject to the bill's provisions.

Notes

The HRO analysis of SB 4 appeared in Part One of the April 26 *Daily Floor Report*.

Civilian-police interaction training

SB 30 by West
Effective September 1, 2017

SB 30 creates the Community Safety Education Act, under which the required curriculum for certain public school students and driver education courses must include instruction on interaction with peace officers. The bill also requires that the minimum curriculum for peace officers include civilian interaction training.

Instruction on interaction with law enforcement. The State Board of Education (SBOE) and the Texas Commission on Law Enforcement (TCOLE) must enter into a memorandum of understanding that establishes each agency's responsibilities in developing instruction on proper interaction with peace officers during traffic stops and other in-person encounters. The instruction must be developed by September 1, 2018, and include information on:

- the role of law enforcement and the duties and responsibilities of peace officers;
- a person's rights concerning interactions with peace officers;
- proper behavior for civilians and peace officers during interactions;
- laws on questioning and detention by peace officers, including any law requiring a person to present proof of identity, and the consequences for either party's failure to comply; and
- how and where to file a complaint against or a compliment on behalf of a peace officer.

The SBOE must adopt rules to include the instruction in one or more courses of the required curriculum for students in grades 9 through 12, beginning with the 2018-19 school year. A school district or charter school may tailor the instruction for its community, with input from local law enforcement agencies, driver training schools, and the community.

Civilian interaction training program. SBOE and TCOLE also must enter into a memorandum of understanding to develop a training program for law enforcement officers on proper interaction with civilians during traffic stops and other in-person encounters. The program must be developed by September 1, 2018, and include the same content as required for the instruction on interaction with law enforcement.

As part of the minimum curriculum, a peace officer must complete the civilian interaction training program within two years after being licensed, unless the officer completes the program as part of the basic training course. A peace officer or reserve law enforcement officer who holds a license issued on or before January 1, 2018, must complete the program by January 1, 2020.

Driver education courses. By September 1, 2018, the Texas Commission of Licensing and Regulation (TCLR) must adopt rules to require information on law enforcement procedures for traffic stops to be part of the curriculum of each driver education course and driving safety course. The curriculum must include a demonstration of the proper actions to take during a traffic stop, in addition to the information required in the instruction and training programs for students and police developed by TCOLE and SBOE.

Supporters said

SB 30 would help address growing tensions between peace officers and civilians through a balanced approach involving education for both law enforcement and the public. Strengthening education of citizens and police officers in Texas on traffic stop procedures could reduce the number of stops that result in arguments, injuries, or even death.

Requiring high school instruction on how best to interact with police officers during in-person encounters would help restore a general sentiment among young people that police officers are peacekeepers. Requiring similar information to be given during police academy training would help ensure that both sides of an encounter had a better understanding of their duties and expectations during such interactions.

The bill would not require the creation of an additional high school course but would allow the incorporation of the instruction into an existing course. Each school would have the flexibility to determine which course was most appropriate for this instruction and how the program would be presented to its students and community. This leeway would ensure that the addition of an instructional requirement did not detract from the core curriculum nor result in an unfunded mandate.

SB 30 is not meant to resolve all differences between law enforcement and civilians. Rather, it would be a first step in helping the two sides better understand each other in an effort to reduce the number of high-tension encounters between police and citizens.

Opponents said

While SB 30 would address real societal issues with police-civilian interaction, the onus of solving the problem should not fall on the state government, especially not the already overburdened public school system. Instead, parents and caregivers should bear the responsibility of teaching young people how to properly interact with authorities. Such instruction also should not be made a permanent part of the Texas curriculum, as it would leave less time available in the school day to devote to core studies.

Notes

The HRO analysis of SB 30 appeared in Part One of the May 19 *Daily Floor Report.*

The 85th Legislature considered other bills on the topic of civilian-police interaction, including **SB 1849** by Whitmire, which generally took effect September 1, 2017. The bill requires TCOLE to mandate that peace officers complete a statewide education and training program on de-escalation techniques to facilitate interaction with the public, including techniques for limiting the use of force that results in bodily injury. Continuing education programs must include training on the same topic. The HRO analysis of SB 1849 appeared in Part One of the May 19 *Daily Floor Report.*

Bullying prevention; mental health education in schools

SB 179 by Menéndez
Effective September 1, 2017

SB 179 revises requirements for school districts' bullying prevention and mental health education efforts, mandates that cyberbullying prevention be included in policies, allows courts to issue temporary injunctions in cyberbullying cases, and revises punishments for the criminal offense of harassment involving certain types of electronic communications.

School policies. SB 179 revises the definition of bullying and defines "cyberbullying" as bullying done through the use of any electronic communication device, including through a cellular or other type of telephone, a computer, a camera, email, instant messaging, text messaging, a social media application, a website, or any other internet-based communication tool.

Education Code provisions on bullying apply to:

- bullying that occurs on or is delivered to school property or at a school activity on or off school property;
- bullying on a school bus or vehicle used to transport students to or from school activities; and
- cyberbullying that occurs off school property or outside of school activities if the cyberbullying interferes with a student's educational opportunities or substantially disrupts the orderly operation of a classroom, school, or school activity.

A school district's anti-bullying policy must include procedures for students to report bullying anonymously and to notify parents of alleged victims within three days of an incident. The bill expands counselors' responsibilities to include serving as an impartial, non-reporting resource for interpersonal conflicts and discord involving two or more students, including accusations of bullying. Principals are permitted, but not required, to report to police bullying that falls under the crimes of assault or harassment. The bill requires open-enrollment charter schools to meet the Education Code's requirements for school districts to develop bullying prevention policies and procedures.

SB 179 allows a public or charter school to expel or to remove from class and place in a disciplinary alternative education program a student for:

- engaging in bullying that encourages another student to commit or attempt to commit suicide;
- inciting violence against a student through group bullying; or
- releasing or threatening to release intimate visual material of a student.

Under the bill, continuing education requirements for teachers and principals may include instruction on how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of affected students. The Texas Education Agency must work with the Health and Human Services Commission to create a website with resources for school employees about working with students with mental health conditions.

The bill revises the list of mental health, substance abuse, and suicide prevention topics on which the Department of State Health Services, in conjunction with other entities, must provide information for public schools to include:

- grief-informed and trauma-informed practices;
- building skills related to managing emotions, establishing and maintaining positive relationships, and responsible decision-making;
- positive behavior interventions and supports and positive youth development; and
- a safe and supportive school climate.

School districts may develop practices and policies in each of these program areas.

Injunctive relief. Under SB 179, victims may use the civil courts to seek injunctive relief against someone who was cyberbullying or against the person's parent if the person conducting the bullying was younger than 18 years old. Courts may issue temporary restraining orders, temporary injunctions, or permanent injunctions to prevent further cyberbullying. The

orders may include prohibiting someone from engaging in cyberbullying and compelling a parent to take reasonable actions to cause someone younger than 18 to cease cyberbullying.

Harassment offense. The bill increases the penalty for the crime of harassment involving the sending of certain electronic communications if done with specific types of intent. The penalty increases from a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) to a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) if repeated electronic communications were sent to someone under 18 years old with the intent that the child commit suicide or engage in conduct causing serious bodily injury. The penalty also increases to a class A misdemeanor if the person sending electronic messages had previously violated a temporary restraining order or injunction involving bullying.

SB 179 also amends the definition of "electronic communication" under the harassment offense to include communication initiated through the use of cellular or other types of telephone, computers, cameras, text messages, social media platforms or applications, internet websites, and any other internet-based communication tool.

Supporters said

SB 179 would help address bullying and the growing and serious issue of cyberbullying by updating Texas laws to reflect changes in technology. The bill would be called "David's Law" in honor of David Molak, a 16-year-old San Antonio high school student who committed suicide in 2016. While parents play an important role in handling bullying, the state should do all it can to prevent tragic incidents like David's and those of other Texas youths who have taken their lives as a result of bullying.

The bill would focus on education, prevention, and intervention while expanding, supporting and increasing efforts to address mental health issues. It also would expand options in serious cases of bullying and cyberbullying in which additional tools are needed to protect victims and take appropriate actions.

School policies. The bill would raise awareness of cyberbullying by requiring that district prevention efforts on bullying include education and resources on the issue. It would require schools' policies to include a way for students to report bullying anonymously, removing a barrier that can stop some students from reporting these incidents. SB 179 would ensure schools had resources to address certain mental health issues, and teachers and principals could receive education on these topics. The bill would not burden districts because its provisions could be incorporated into schools' existing bullying prevention and education efforts.

The bill would allow schools to handle the most serious cases by placing bullies in disciplinary alternative education programs or expelling them. These measures appropriately would be available to deal with cases in which the bullying involved encouraging suicide, inciting violence, or releasing intimate visual material. To deal effectively with these cases, it is important for schools to be able to intervene and separate the student doing the bullying from the victim.

SB 179 would enable schools to address cyberbullying of students that occurred away from school or school activities if it interfered with a student's educational opportunities or substantially disrupted classrooms, schools, or school-related activities. Schools have said they could not intervene in some cases where bullying occurred away from school.

Injunctive relief. SB 179 would give victims of bullying another tool to try to stop the harm by authorizing injunctive relief, such as temporary restraining orders. This could offer respite to those being bullied by allowing courts to shut down abusive online bullying and to take other actions to stop bullying.

Harassment offense. The bill would address gaps in current criminal laws by increasing penalties for the most serious types of cyberbullying that fall under the harassment statute. This would be an update to a current offense, not an increase in criminalization. While prevention and education are important, law enforcement officers should have this tool available to address the most egregious cases of ongoing cyberbullying. Cases in which youths were subject to the higher penalty would be handled through the juvenile justice system, which is focused on rehabilitation and uses progressive sanctions such as restitution, community service, counseling, and parental intervention.

Opponents said

Education, not criminalization, would be the best tool to address bullying. Parents and educators should focus on prevention, early intervention, and other best-practice strategies, which are more effective than criminal penalties and measures such as expulsion. Instead of emphasizing harsher penalties, the goal should be to address the underlying issues that lead to bullying.

Notes

SB 179 was considered by the House on May 11 in lieu of the companion bill, **HB 306** by Minjarez. The HRO analysis of HB 306 appeared in Part Three of the May 8 *Daily Floor Report*.

Increasing penalty for certain animal cruelty offenses

SB 762 by Menéndez
Effective September 1, 2017

SB 762 revises the penalties for certain types of animal cruelty crimes. It increases penalties from a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) to a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) for first offenses involving:

- torturing or cruelly killing or causing serious bodily injury to an animal; and
- without an owner's consent, killing, poisoning, or causing serious bodily injury to an animal.

The bill also increases penalties for repeat offenses of these types of animal cruelty, applies the higher penalties to second rather than third offenses, and revises the types of previous animal cruelty offenses that can lead to a crime being categorized as a repeat offense and thus subject to a higher penalty.

Crimes qualifying as repeat offenses are second-degree felonies (two to 20 years in prison and an optional fine of up to $10,000). The bill also revises the penalty for certain other repeat animal cruelty offenses to apply to second rather than third offenses.

SB 762 allows statements made at hearings relating to seizing a cruelly treated animal to be admissible in trials for offenses involving cruelty to animals.

Supporters said

SB 762 would strengthen Texas' animal cruelty laws to address the most extreme and violent acts of animal cruelty. These crimes can include horrendous acts of torturing, cruelly killing, and causing serious bodily injury to animals, which under current law would be punished only as a state-jail felony. An increase in this penalty is needed to deter offenses and to establish punishments that better fit the crime for those who inflict such abuse. These offenses should be taken seriously and punished at a higher level than under current law because abuse of animals has been connected to committing other serious and violent offenses. The penalties established by the bill would allow a range of punishments, including those serious enough for the most horrific offenses. This bill is focused on animal cruelty and should not be compared to laws or potential legislation dealing with other subjects.

Opponents said

Current law carries a serious penalty of a state-jail felony for animal abuse with harsher penalties for repeat offenders. SB 762 would establish penalties for animal cruelty harsher than the state-jail felony the Legislature prescribed for those who perform prohibited partial-birth or dismemberment abortions. While animal cruelty is reprehensible, criminal penalties set by the Legislature should place the highest value on human life.

Notes

The HRO digest of SB 762 appeared in Part Two of the May 22 *Daily Floor Report.*

SB 1232 by Huffman, effective September 1, 2017, made bestiality a separate crime in the Penal Code. The bill establishes 10 categories of actions that define the offense of bestiality, including certain sexual acts and actions furthering those acts. An offense is a state-jail felony, except that engaging in certain conduct in the presence of a child or in conduct that resulted in serious bodily injury or death of an animal is a second-degree felony. The bill added bestiality to the offenses that require offenders to register as sex offenders. The HRO analysis of SB 1232 appeared in Part Two of the May 20 *Daily Floor Report*.

Mental health in jails, diversion, jail safety

SB 1849 by Whitmire
Generally effective September 1, 2017

SB 1849 revises laws on the identification of an arrestee who might be a person with a mental illness or an intellectual disability and on diversion to treatment by law enforcement of a person experiencing a mental health crisis or the effects of substance abuse. It also revises laws dealing with jail safety, requires the reporting of serious incidents in jails, revises training requirements for certain law enforcement authorities, and expands reporting of certain types of information about law enforcement activities.

Identification, screening of arrestees. The bill shortens the time frame during which sheriffs must notify magistrates about having credible information that someone in their custody may have a mental illness or is a person with an intellectual disability. The notice must be given within 12 hours, rather than 72 hours, of receiving the information.

Diversion to treatment. Law enforcement agencies are required to make a good faith effort under certain circumstances to divert to treatment those experiencing a mental health crisis or the effects of substance abuse. The person being diverted must be accused of a non-violent misdemeanor, and the mental health crisis or substance abuse issue must be the suspected reason the person committed the alleged offense. This diversion requirement does not apply to those accused of driving while intoxicated or certain other intoxication offenses.

SB 1849 revises the criteria that apply to grants that the Department of State Health Services currently may make to community collaboratives. The bill adds substance abuse issues to the list of services that grants may support and removes a requirement that grants be made in the most populous cities in large counties. The bill includes local law enforcement agencies among the groups with which local entities receiving grants must coordinate and requires those receiving grants to provide evidence of a local law enforcement policy to divert appropriate persons for services from jails to an entity affiliated with the collaborative.

Jail standards on prisoner safety. The Commission on Jail Standards must adopt rules and procedures to ensure the safety of prisoners, including those requiring county jails to:

- give prisoners the ability to access a mental health professional 24 hours a day at the jail through telemental health services;
- give prisoners the ability to access a health professional 24 hours a day at the jail or through telehealth services or provide transportation to a health professional; and
- if funding is available, install automated sensors or cameras to ensure accurate and timely in-person checks of cells with at-risk individuals.

The bill authorizes the commission to establish a program to provide grants to counties with jails of 96 beds or fewer to fund capital improvements required by the prisoner safety rules.

Serious incidents report, investigations. SB 1849 requires sheriffs to report monthly to the Commission on Jail Standards on the occurrence of several types of incidents involving jail prisoners in the preceding month. Sheriffs must report on suicides, attempted suicides, deaths, serious bodily injury, assaults, escapes, sexual assaults, and uses of force resulting in bodily injury. If a prisoner dies in a county jail, the commission must appoint a law enforcement agency, other than the one that operated the jail, to investigate the death.

Officer, jailer training. SB 1849 sets at 40 hours a required statewide education and training program for law enforcement officers on de-escalation and crisis intervention techniques for interactions with persons with mental impairments. It also establishes training requirements for peace officers on de-escalation techniques to facilitate interaction with the public, including techniques for limiting the use of force that results in bodily injury. The training program for county jailers must include at least eight hours of mental health training. The bill requires jail administrators, other than sheriffs, to pass a newly created examination as a condition of serving in this capacity.

Racial profiling policies. SB 1849 changes requirements for law enforcement agencies' racial profiling policies. It expands the requirement to collect information about motor vehicle stops in which citations were issued or arrests were made to include information on tickets and warnings. The bill requires the type of information collected to include whether a peace officer used physical force that resulted in bodily injury, the location of the stop, and the reason for the stop.

Reports required for motor vehicle stops. The bill adds to the information that must be reported by peace officers who stop motor vehicles for alleged law violations. It establishes a new requirement to report whether the officer used physical force that resulted in bodily injury. The annual reporting of this information is subject to a new requirement to evaluate and compare the number of searches resulting from motor vehicle stops and whether contraband or other evidence was discovered in the process.

Supporters said

SB 1849 would improve the state's criminal justice system by expanding options for handling those suffering mental health or substance abuse issues, improving safety in county jails, expanding training of law enforcement officers, and increasing and improving the collection of data. The act is focused on preventing future tragedies and would be named in honor of Sandra Bland, who died in a county jail after an arrest that followed a traffic stop.

Identification, screening of arrestees. SB 1849 would accelerate the timeline for passing along initial information indicating that an arrestee might have a mental illness or an intellectual disability. This would ensure that magistrates had all available information at the hearing required to happen under current law within 48 hours of an arrest. The early identification and appropriate handling of inmates with mental illness or intellectual disabilities would end up saving resources and help lead to the appropriate resolution of cases.

Diversion to treatment. Requiring law enforcement to make good faith efforts at diverting to treatment certain persons suffering a mental health crisis or from the effects of substance abuse would result in better outcomes for those diverted, while allowing the criminal justice system to focus on other offenders. Diversions could help address underlying issues that without treatment can result in a person cycling through the criminal justice system.

SB 1849 could reduce the number of people in jails with mental illness and substance abuse issues by expanding the scope of community collaboratives and increasing options to divert those with mental health or substance abuse needs from the criminal justice system.

Jail standards on prisoner safety. The bill would help create safer jails by requiring the Commission on Jail Standards to adopt uniform, statewide rules relating to the safety of inmates. These rules would help ensure that people in jails had access to treatment and that those at risk of coming to harm were adequately monitored. Cameras and electronic sensors would be required only if funding were available, ensuring the requirement would not be a burden.

Serious incidents reports, investigations. By requiring reporting on serious incidents and investigations of jail deaths, the bill would help the state track, address, and prevent these issues.

Officer, jailer training. The bill would promote and improve training of law enforcement authorities. Requirements for peace officers to receive training in de-escalation could improve interactions between officers and the public and could prevent future tragedies. Mental health training for county jailers would help ensure that those who interacted with prisoners were adequately prepared. Establishing an exam for jail administrators would help ensure that those responsible for day-to-day jail operations were knowledgeable about jail commission rules and that everyone statewide met this qualification.

Racial profiling policies. SB 1849 would expand and improve data collection under law enforcement agencies' racial profiling policies. Collecting additional information about each stop would aid in identifying and addressing problems, which would help ensure Texans were treated fairly. The bill would facilitate accountability and communications between the public and law enforcement agencies by requiring all tickets, citations, and warnings to include contact information for compliments or complaints.

Reports required for motor vehicle stops. SB 1849 would improve the collection of information about motor vehicle stops by expanding reporting and requiring additional information.

Opponents said

SB 1849 would not adequately address many of the issues that were discussed following the death of Sandra Bland in a Texas jail. Other reforms are needed, including those revising the state's bail system, prohibiting arrests for fine-only offenses, addressing racial profiling, and revising the rules governing certain types of searches and stops by law enforcement officers. Meeting the requirements of SB 1849 could require additional resources from counties and local law enforcement agencies that already may be financially strained.

Notes

The HRO analysis of SB 1849 appeared in Part One of the May 19 *Daily Floor Report.*

Elections

* Finally approved

Eliminating one-punch, straight-party voting

HB 25 by Simmons
Effective September 1, 2020

HB 25 eliminates straight-party voting and repeals several sections of the Election Code that reference straight-party voting. The secretary of state must adopt rules and establish procedures to ensure that voters and county election administrators are not burdened by its elimination.

The secretary of state and the voter registrar of each county that maintains a website must provide notice online that straight ticket voting has been eliminated in each language in which voter registration and election materials are available. As soon as practicable after the bill's effective date of September 1, 2020, the secretary of state must electronically distribute to each county election administrator and the county chair of each political party notice that straight ticket voting has been eliminated.

Supporters said

HB 25 would encourage voters to consider more carefully candidates running in elections by eliminating straight-party voting. Voters often are familiar with candidates at the top of the ballot but may not make as much effort to research down-ballot candidates, resulting in a system that poorly vets elected officials for offices that most directly impact the lives of constituents. In some cases, one-punch voting can result in a voter failing to cast votes in nonpartisan races or propositions.

Texas is among the few states that allow one-punch, straight-party voting. Data from several states that no longer allow one-punch voting show that its elimination increases voter turnout as well as the likelihood that voters will weigh in on more of the measures contained in the ballot. For example, Texas and Georgia both held statewide ballot propositions on transportation funding in 2014. In Texas, 17.3 percent of those voting in the governor's race did not cast a vote on the proposition. Conversely, in Georgia only 2.6 percent of those voting in the governor's race did not cast a vote on the proposition.

Opponents said

Eliminating one-punch, straight-party voting would not eliminate straight-party voting but merely make it more cumbersome for the many Texas voters who currently use the one-punch option. Party labels are a useful and informative designation, and a voter who wishes to vote for all of the candidates of a single party should be able to do so easily. While some suggest that eliminating straight-party voting would encourage voters to make better-informed choices with regard to down-ballot candidates, there are better ways to solve that problem than removing the ability to use one-punch, straight-party voting.

Efforts outside of Texas to eliminate straight-ticket voting have been challenged. In 2016, Michigan enacted a bill that eliminated straight-party voting, which was blocked by a federal district court and remains so after appeals by the state to higher courts were ultimately declined. The decision to block the law was based on evidence showing strong correlations between the size of the African-American voting population within a district and the use of straight-party voting in that district. Those districts also historically have faced some of the longest wait times to vote in Michigan, which meant that eliminating straight-party voting would impact African-American voters to a greater degree.

Other opponents said

While eliminating straight-party voting could have merit, the state should consider the effect this could have on its larger cities and counties. Harris County consistently has one of the longest ballots in the country. By extending the time it took voters to cast ballots, ending one-punch voting could lengthen the wait time for voters in line at each polling place.

Notes

The HRO analysis of HB 25 appeared in Part Two of the May 5 *Daily Floor Report*.

Modifying voter identification requirements

SB 5 by Huffman
Effective January 1, 2018

SB 5 revises the photo identification requirements for voting and establishes a mobile unit program for issuing election identification certificates.

Photo identification. SB 5 allows a person, when presenting to vote, to produce any currently acceptable form of photo ID that is not more than four years, rather than 60 days, expired. A person 70 years of age or older may present any acceptable form of expired photo ID as long as it is otherwise valid.

In place of an acceptable form of photo ID, a person may present an alternative form of identification accompanied by a signed reasonable impediment declaration. Acceptable alternative forms of ID include:

- a government document showing the voter's name and address, including voter registration certificates;
- a current utility bill, bank statement, government check, or paycheck showing the voter's name and address; or
- a certified copy of a domestic birth certificate or other document confirming birth that established identity and is admissible in court.

Impediments that a voter may declare as reasons why he or she is unable to secure an acceptable form of identification are lack of transportation, lack of documents needed to obtain a photo ID, work schedule, lost or stolen photo ID, disability or illness, family responsibilities, or that the voter had not received a form of photo ID for which the voter had applied.

An election officer may not refuse to accept documentation presented to meet these requirements solely because the address on the documentation does not match the address on the list of registered voters and may not question the reasonableness of an impediment sworn to by a voter. When a voter executes a reasonable impediment declaration, an election officer must affix the voter's voter registration number to the declaration.

The penalty for a voter who intentionally makes a false statement or provides false information on the declaration is a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000). The penalty for an election officer who unlawfully accepts an ineligible voter or refuses to accept an eligible voter is increased from a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) to a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

Mobile unit program. The secretary of state must establish a program to provide election identification certificates to voters using mobile units. The bill requires the secretary of state, when creating the program, to consult with the Department of Public Safety on security relating to and best practices and equipment required for issuing the certificates. The secretary of state may deny a request for a mobile unit if the required security or other necessary elements of the program cannot be ensured.

Supporters said

SB 5 would maintain the integrity of elections in Texas by requiring identification of voters at the polls while still allowing any eligible voter to cast a ballot. Most voters favor requiring presentation of a photo ID at the polls, and it is the preferred method of ensuring integrity at the ballot box.

The bill would address concerns raised by recent federal court cases holding that the current photo ID law has a racially discriminatory effect in violation of the Voting Rights Act. It would expand acceptable identification documents and add the reasonable impediment declaration, closely following the directive of an interim order issued by the federal district court.

The penalty for making a false statement or providing false information on the reasonable impediment declaration for voters without a photo ID would be in line with the range for similar offenses, and requiring a prosecutor to prove the voter intentionally made the false statement would provide a safeguard to voters.

Opponents said

While SB 5 is an attempt to address the issues raised by federal courts on Texas' voter ID law, it would miss the mark by deviating from the remedy provided in the interim court order. The court expects to revisit the issue after the legislative session to determine if further remedies are needed. The state already has spent resources defending its voter ID law, and it would be better not to codify a remedy that also could fail to meet the standards of the federal Voting Rights Act.

The list of acceptable impediments to obtaining the ID should include an "other" box with room for a written explanation. Not all voters would fall into the seven categories laid out in the bill. A person also should be allowed to present federally acceptable identification for Indian tribes, student photo IDs, and government photo IDs, which are honored in other states.

Voters are already anxious about their participation in the voting process, and the penalty provided could deter those voters from casting a ballot. The penalty also would not be accompanied by an affirmative defense to protect a voter who was directed to fill out the reasonable impediment declaration incorrectly by an election worker.

Notes

The HRO analysis of SB 5 appeared in Part One of the May 23 *Daily Floor Report*.

Processes and penalties related to voting by mail

SB 5 by Hancock, First Called Session
Effective December 1, 2017

SB 5 creates a new criminal offense for election fraud, revises other offenses relating to voting through mail-in ballots, increases several penalties for crimes relating to mail ballots, and makes other changes in the handling of mail ballots and applications for ballots. It also repeals a law enacted during the 85th Legislature's regular session on voting in nursing homes and similar facilities.

New offense for election fraud. SB 5 creates a new crime called "election fraud," in which a person commits an offense by knowingly or intentionally making an effort to:

- influence the independent vote of another in the presence of the ballot or during the voting process;
- cause a voter to become registered, a ballot to be obtained, or a vote to be cast under false pretenses; or
- cause an intentionally misleading statement, representation, or information to be given to an election official or on an application for a mail ballot, carrier envelope, or any other official election-related document.

The offense is class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000). The penalty increases to the next higher category if the offense involved a voter 65 years old or older and the person was not closely related to the voter or living in the same dwelling as the voter at the time of the offense. The penalty also increases if the person committed another such offense in the same election or the person had a previous conviction for a crime under the Election Code.

Voting in residential care facilities. SB 5 repeals a law enacted during the 85th Legislature's regular session, HB 658 by Bernal, which established a process for early voting in residential care facilities, including nursing homes and assisted living facilities. Under that legislation, election officials were required to hold early voting at a facility if five or more of its residents made applications for mail ballots. HB 658 took effect September 1, 2017, and SB 5 repealed its provisions on December 1, 2017.

Offenses, penalties related to mail ballots. SB 5 revises penalties for several offenses that relate to applying for a mail ballot and voting by mail, in most cases increasing from one level of misdemeanor to a higher one or increasing misdemeanors to state-jail felonies (180 days to two years in a and an optional fine of up to $10,000). For several offenses, penalties were increased to the next higher category if the offense involved a voter 65 years old or older, the person committed another such offense in the same election, or the person had a previous conviction for a crime under the Election Code. The bill also modifies requirements of some offenses, including the circumstances under which certain offenses do not apply.

Illegal voting. The bill expands the general offense of illegal voting to include voting or attempting to vote a ballot belonging to another person. The offense involving marking another's ballot is expanded to include marking any portion of a ballot without the person's consent and marking a ballot without specific direction from the person on how to mark it.

Information on ballot application. SB 5 expands the offense of knowingly providing false information on applications for mail ballots to include intentionally causing false information to be provided on an application, knowingly submitting an application for a mail ballot without the knowledge or authorization of the voter, and knowingly altering information provided by the voter.

Assisting voter with carrier envelope. SB 5 expands who must provide certain identifying information when assisting a voter with a mail ballot to include those who assisted a voter by obtaining an envelope necessary to return a ballot.

Returning marked ballots. SB 5 revises the conditions under which the offense concerning illegally possessing an official ballot or carrier envelope does

not apply. Under one of these revisions, unless a person possessed the ballot or envelope with intent to defraud, the offense would not apply to someone physically living in the same place as the voter, rather than to someone registered to vote at the same address.

Assisting voters with mail ballots. SB 5 authorizes voters who are disabled and physically unable to mail a ballot to select someone to deposit the sealed carrier envelope in the mail.

Verifying signature on mail ballots. SB 5 expands the types of signatures that signature verification committees may use to verify that the signature on a carrier envelope and on an application for a mail ballot are from the same person. The bill makes it a crime to intentionally accept a ballot or cause one to be accepted if the person knows that it does not meet certain requirements.

Rejected, cancelled ballots. SB 5 requires the early voting clerk to notify the attorney general of rejected ballots. The clerk has 30 days after an election to give notification of ballots rejected because the voter was deceased, because the voter already voted in person, or for certain irregularities on the carrier envelope and ballot application.

The bill also requires the early voting clerk to within in 30 days of an election send to the attorney general notice of requests to cancel mail ballots.

Retaining precinct election records. SB 5 requires that all precinct election records be preserved for at least 22 months after election day, rather than requiring that records involving elections for federal office be retained for 22 months and records in other elections be retained for at least six months.

Other provisions. SB 5 contains several other provisions, including:

- prohibiting the use of electronic signatures on applications for an early voting ballot by mail;
- requiring that applications for mail ballots that are submitted electronically or by fax also be submitted by mail and be received within four days after the electronic or fax application;
- expanding the reasons a voter may return a mail ballot to voting officials and vote in person to include having never requested a mail-in ballot; and
- revising the timeline for election officials to mail ballots to voters.

Supporters said

SB 5 would strengthen laws governing mail-in ballots to restore and maintain the integrity of Texas elections. Vote fraud by mail is a problem in Texas, with reports of voters receiving mail ballots they did not request, forgeries on mail ballot applications, and ballot harvesting in which someone fraudulently collects and casts others' ballots. SB 5 would give authorities more tools to combat problems with voting by mail.

The bill would create a new offense for election fraud to fill a gap in current law and cover situations in which vote harvesters or others try to harm the integrity of an individual's vote. The illegal actions would have to be done knowingly or intentionally to ensure that they applied only to those purposefully violating the law and did not encompass everyday situations in which no fraud was intended.

SB 5 would establish tougher penalties for many offenses related to mail voting to deter ballot fraud and to properly punish those who violate the law. Current penalties can amount to no more than a slap on the wrist, and prosecutors can be reluctant to pursue current offenses because most are only misdemeanors. By increasing penalties, SB 5 would put teeth into the law and give law enforcement authorities more leverage to go after ringleaders.

The bill would enhance penalties in appropriate situations. Vote harvesters and others often prey on the elderly, so the bill would increase penalties when victims were at least 65 years old. Repeat offenders also would face tougher sanctions, and the bill would allow prosecutors to pursue more severe penalties when someone defrauded several voters during one election.

SB 5 would not reduce voter turnout or suppress the votes of those voting legally but instead would target only those trying to commit ballot fraud. Offenses related to mail ballots have requirements that actions be taken intentionally and knowingly, which would keep them from being applied in innocent situations, and provisions throughout the statute make offenses not apply to family members. Prosecutors would not use the law to target those legally and legitimately helping relatives.

SB 5 would help increase mail ballot security in several ways. The bill would give ballot boards and signature verification committees more options to verify signatures and would give officials more time to access records when combatting potential ballot fraud by creating a uniform requirement for records retention in all elections. The bill also would require that the attorney general receive notification of rejected ballots, centralizing the process of collecting and analyzing such information.

Opponents said

Ballot fraud and other actions to defraud voters already are against the law, and current penalties appropriately punish these offenses. The new crime of election fraud proposed under SB 5 would be too broad and might be interpreted to encompass family members or roommates discussing an election in a room that also contained a ballot. Such broad language could have the unintended consequence of deterring family members from helping elderly or disabled relatives and could raise questions about whether an innocent conversation in the proximity of a ballot was a crime.

The penalty increases proposed in SB 5 would be too harsh and in some cases could put mail ballot crimes on the same felony level as violent offenses, which could consume resources better directed at violent offenders. Raising penalties, especially to the felony level, could deter someone from legally assisting a voter who qualified for and needed assistance, which could suppress voter turnout.

A lack of resources and the complexity of proving ballot fraud cases could be more likely reasons for problems in pursuing such cases than the level of the penalties or a lack of offenses. Making crimes related to ballot fraud felonies would not ensure that they received any more attention because they would have to compete with other felonies for investigation and prosecution resources. Combatting problems with mail ballots might be better addressed through civil or administrative penalties, rather than enhanced criminal penalties, or through revisions to the application process or a redesign of mail ballot applications and envelopes to make them easier to understand.

Notes

The HRO analysis of SB 5 appeared in the August 9 *Daily Floor Report.*

General Government and Appropriations

* Finally approved

Cybersecurity-related requirements for state agencies

HB 8 by Capriglione
Effective September 1, 2017

HB 8 establishes the Texas Cybersecurity Act, which creates cybersecurity-related requirements for all state agencies, requires certain studies and reports, and establishes select legislative committees.

DIR plan to address cybersecurity risks and incidents. The bill requires the Department of Information Resources (DIR) to develop a plan to address cybersecurity risks and incidents. The department may partner with a national organization and enter into an agreement that may include:

- developing a curriculum on cybersecurity risks and conducting training and simulation exercises for state agencies to encourage coordination in responding to risks and incidents;
- providing technical assistance to support preparedness for and response to cybersecurity risks and incidents; and
- incorporating cybersecurity risks and incident prevention and responses into state emergency plans.

DIR must provide mandatory guidelines to state agencies on continuing education requirements for cybersecurity training to be completed by all information resources employees of the agencies.

DIR also must establish a center for state agencies to share information on cybersecurity threats, best practices, and remediation strategies.

State agency assessments, reports, plans. At least once every two years, each state agency must conduct an information security assessment and report the results to DIR, the governor, the lieutenant governor, and the House speaker.

Each agency must include in its information security plan a written acknowledgement that certain agency executives have been made aware of the risks revealed during the plan's preparation.

The information resources manager of a state agency must prepare a biennial report that assesses the extent to which information technology of the agency is vulnerable to unauthorized access or harm.

State agencies have to include certain information in their plans for addressing security issues related to legacy, or outdated, systems. These plans must include, among other information, a strategy for mitigating workforce-related discrepancies in information technology and other cyber-related positions with the appropriate training and certifications.

Data security for online and mobile applications. State agencies with a website or mobile application that processes confidential or sensitive personal information must submit a biennial data security plan to DIR to establish planned beta testing, subject the sites and applications to a vulnerability and penetration test, and address vulnerabilities identified through the testing.

Institutions of higher education must adopt a policy for website and mobile application security procedures that includes certain requirements for developers. They also must subject sites and applications to vulnerability and penetration tests.

Meetings to deliberate security devices or audits. The bill allows all governmental bodies, not only DIR as under previous law, to conduct closed meetings to deliberate security assessments of information resources technology, network security information, or the deployment of personnel, critical infrastructure, or security devices.

Security breach notification. If a state agency discovers a breach or suspected breach of system security or unauthorized exposure of sensitive information, it must notify DIR within 48 hours and disclose the breach, suspected breach, or unauthorized exposure of information to those affected as soon as possible. If the action involves election data, the secretary of state must be notified.

Election cyberattack study. The secretary of state must conduct a study of cyberattacks on election infrastructure that includes an investigation of

vulnerabilities and risks for a cyberattack against voting machines or the list of registered voters, information on any attempted attack, and recommendations for protecting voting machines and the list of voters. A public summary and a confidential report must be submitted to the legislative committees with appropriate jurisdiction by December 1, 2018.

Study on digital data storage and records management. The bill requires DIR, with the Texas State Library and Archives Commission, to study state agency digital data storage and records management practices and the associated costs. DIR must submit a report to the lieutenant governor, the House speaker, and appropriate legislative committees by December 1, 2018.

Cybersecurity council. The state cybersecurity coordinator is required, rather than allowed, to establish a cybersecurity council that includes certain public and private sector leaders. The council will:

- consider costs and benefits of establishing a computer emergency readiness team;
- establish criteria and priorities to address cybersecurity threats to critical installations;
- consolidate and synthesize best practices;
- assess the knowledge, skills, and capabilities of the existing cyber-related workforce; and
- recommend legislation to implement best practices and remediation strategies for the state.

Select committees on cybersecurity. The lieutenant governor and the House speaker each must establish a five-member select committee to study cybersecurity in Texas, the information security plans of agencies, and the risks and vulnerabilities of state agency cybersecurity. The committees must report jointly to the Legislature by January 13, 2019.

Sunset review process. The bill requires the Sunset Advisory Commission to consider an assessment of an agency's cybersecurity practices during the Sunset review process.

Supporters said

HB 8 would reduce Texas' vulnerability to cyberattacks by assessing risk at state agencies, increasing efforts to protect sensitive and confidential data, closing the workforce skills gap, and ensuring that agencies had incident response plans. As the world becomes more reliant on digitally connected infrastructure, cyber-related incidents can affect the economy, the government, and the lives of private citizens. Texas currently is behind other states in enacting cybersecurity initiatives. It is critical to ensure agencies have the necessary tools to protect the state from the evolving world of sophisticated cyberattacks.

Investing in the state's cyber infrastructure and personnel would help to prevent serious losses of sensitive data, potentially saving millions of dollars in recovery services in the future. A significant state data breach could cost the state money and public trust. While there are initial costs to implement the bill, these would decrease over time because the cost of maintaining the infrastructure would not be as significant as updating it.

The human factor is the most important component of cybersecurity. Agencies can expend resources on infrastructure, but if cyber-related personnel lack skills and training, the agency remains vulnerable. HB 8 prioritizes workforce development and closing the IT skills gap to help the state build a more confident, skilled workforce by requiring continuing education for cyber-related personnel.

The bill would standardize reporting by state agencies when it was suspected that sensitive data had been compromised. It is important to require all agencies to be in the practice of notification so that DIR is aware of each actual and suspected incident that occurs.

Opponents said

HB 8 would create burdens and costs for state agencies that already are overwhelmed and underfunded. DIR already performs some of the functions required by the bill, creating an element of redundancy.

The bill would require entities to notify the public not only in the event of a breach or suspected breach but also when an unauthorized exposure of information is discovered. An unauthorized exposure of information may not involve confidential information or result in a risk to the public. Requiring notification in these cases may be costly and burdensome for agencies.

Other opponents said

HB 8 is a necessary step for the state to take in creating a holistic approach to cybersecurity. However, if the bill's mandates went unfunded and agencies were not given the resources to comply, the state would continue to be vulnerable.

Notes

The HRO analysis of HB 8 appeared in the April 24 *Daily Floor Report.*

The 85th Legislature also enacted **HB 9** by Capriglione on cybersecurity. The bill established the Texas Cybercrime Act, which created new offenses for electronic access interference, electronic data tampering, and unlawful decryption. HB 9 was effective September 1, 2017. The HRO analysis of HB 9 appeared in the April 12 *Daily Floor Report.*

Statutory limit on growth rate of certain appropriations

HB 208 by Parker, First Called Session
Died in the House

HB 208 would have established an additional limit on appropriations. The new limit would have been based on the growth rate of the Texas economy, similar to the way the current constitutional limit on appropriations of non-dedicated state tax revenue is calculated (Art. 8, sec. 22). The new limit would have applied to all sources of revenue, other than federal revenue, and would have prohibited the rate of growth of appropriations from these sources from exceeding the estimated growth rate of the Texas economy. The Legislature would have been authorized to make appropriations that exceeded the new limit by adopting a resolution approved by a three-fifths vote of the members of each chamber.

The bill would have repealed the current method, based on personal income, that the Legislative Budget Board (LBB) is required to use to determine the growth rate of the Texas economy and would have replaced it with a calculation based on average population growth and inflation. The LBB would have been required to use the growth rate of the economy to establish both limits on the rate of growth of appropriations. If the economy's growth rate from one biennium to the next was negative, the amount of appropriations of non-dedicated state tax revenue and of consolidated general revenue could not grow.

Supporters said

HB 208 would establish an additional statutory spending limit to maintain fiscally responsible spending of taxpayer dollars by future legislatures. While the Legislature has been fiscally conservative with taxpayer dollars, the limit in the bill would help ensure the state's long-term financial well-being by limiting spending and tax increases to what Texas can afford, thereby supporting economic growth. HB 208 would address problems with the current spending cap by limiting appropriations from a larger pool of funds and improving the way the limit is calculated.

HB 208 would provide a more transparent and accurate picture of state budgeting by expanding the types of revenue from which appropriations are limited. The current constitutional limit on spending growth applies to state tax revenue not dedicated by the Constitution, which is only about 60 percent of the budget and may provide an incentive to constitutionally dedicate funds so they fall outside the cap. Another limit, the pay-as-you-go limit, also leaves a portion of the budget not subject to a cap. HB 208 would bring all funds that are subject to state oversight under a limit. It would not bring federal funds under the limit because they are given to the state for a specific purpose.

HB 208 would establish a better way to calculate the growth rate of the economy to determine both the existing spending limit and the new limit established by the bill. Under current statute, the limit on growth of appropriations is based on personal income growth, which is volatile, unreliable, and tends to increase faster than the overall economy. HB 208 would replace this measure with a more appropriate one based on population growth and inflation. The new measure would reflect more accurately what was happening with the state's economy, which would limit spending to what the state could afford. To ensure fiscal discipline, the threshold to exceed the new spending limit would require approval by three-fifths of the members in each legislative chamber.

While the Legislature could impose additional spending limits without legislation, placing the cap in statute would protect Texans by ensuring that future legislatures adhered to it.

Opponents said

It is unnecessary for the Legislature to enact additional restrictions on state spending. Current limits work well to check state spending, and a new limit would complicate budgeting unnecessarily. 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 four spending restrictions.

Establishing additional spending limits would reduce flexibility in budgeting. This could hinder the stat's ability to respond to changing conditions, meet

the need for a service, or make large investments in one area of the budget. Another cap restricting the growth of spending could make it more difficult to recover and make investments after the state was required by an existing cap to reduce spending. Such a limit also could provide an incentive to push responsibility for spending onto local governments.

While the current constitutional limit is restricted to tax revenue not dedicated by the Constitution, HB 208 would place under a new limit other types of revenue, such as fees and lottery revenue. By pulling such revenue under a spending cap, the bill could unfairly result in a limit on spending funds that were collected for a specific purpose and the need for which might not be related to economic indicators.

While there might be a benefit in taking population and inflation into account when budgeting, these factors should not be built into another limit that could tie the hands of lawmakers.

Other opponents said

To ensure full budget transparency, the Legislature should apply limits to all spending, including federal funds. Any new cap based on inflation also should require the use of the consumer price index so that the costs of goods and services for taxpayers were considered.

Notes

The HRO analysis of HB 208 appeared in the August 12 *Daily Floor Report.*

Financial disclosure requirements; pension forfeiture

HB 501 by Capriglione/SB 500 by V. Taylor
Effective January 8, 2019/Effective June 5, 2017

HB 501 expands the financial disclosure requirements for legislators, certain other elected and appointed officials, and political candidates.

Personal financial statement filers must disclose certain contracts with a governmental entity or with a person who contracted with a governmental entity if the filer, the filer's spouse or dependent child, or any business entity for which any of those individuals had at least a 50 percent ownership interest was a party. If the aggregate cost of goods or services sold under one or more written contracts was more than $10,000 in the year covered by the report, the filer must identify each contract of $2,500 or more and parties to the contract. Disclosure is not required for an employment contract between a school district or charter school and an employee or for certain contracts related to public communications research and publicly funded research.

If the filer is a member of the Legislature and provided bond counsel services to an issuer covered by the Public Security Procedures Act, the filer also must disclose the name of the issuer, the date and amount of the issuances, and the amount and reporting category of fees paid to the filer or the filer's firm.

Filers must describe corporations, firms, and other business entities in which 5 percent or more of the outstanding ownership is held or acquired or was sold.

HB 501 allows a filer to amend a financial statement so long as the original statement was made in good faith and the person makes the amendment within 14 days of becoming aware of an error or omission.

SB 500 prohibits government pensions from being paid to elected state and local officials convicted of certain felonies arising from their duties in public office. For any felony conviction, the bill requires a legislator, governor, or statewide elected official to vacate office on the date the conviction becomes final.

Pension payments. The bill's pension forfeiture requirements apply to legislators, judges, other state elected officials, as well as officials elected to positions in political subdivisions such as cities and counties.

A qualifying felony is one involving bribery; embezzlement, extortion, or theft of public money; perjury; coercion of a public servant or voter; tampering with a governmental record; misuse of official information; conspiracy to commit any of the preceding offenses; or abuse of official capacity. The trial judge is required, upon conviction of a defendant, to make an affirmative finding of fact that the defendant was a member of the elected class of the Employees Retirement System of Texas or became eligible for a public retirement system wholly or in part due to the person's elected office. The court must notify the retirement system of the conviction. The entity the defendant served also must notify the retirement system within 30 days of the conviction.

Upon receipt of this notice or a similar one from a federal court or U.S. attorney, the retirement system must suspend retirement pay to the member, who is entitled to a refund of contributions and earned interest.

Community property and alternate payees. A court may, in the same manner as in a divorce or annulment proceeding, award the member's spouse all or part of the community property interest in the retirement annuity forfeited by the member. If the annuity had been subjected to a written marital property agreement before the member committed the offense, a court must award the forfeited annuity to the spouse as provided in the agreement.

If the member's spouse is convicted as a party to the felony, the spouse forfeits the member's retirement annuity and service retirement contributions to the same extent as the member.

Benefits payable to an alternate payee, such as a former spouse, child, or other dependent, under a qualified domestic relations order established before the bill's effective date are not affected. Any refund of the member's contributions and earned interest are subject to awards made to a former spouse in a divorce or child support order.

Overturned conviction. Should a conviction be overturned on appeal or the defendant pardoned or

declared innocent, the individual is entitled to resumed payments plus an amount equal to the accrued total and earned interest on withheld amounts.

Supporters said

HB 501 would expand transparency of public officials' outside business dealings by requiring members of the Legislature and others who filed personal financial statements with the Texas Ethics Commission to disclose contracts with governmental entities entered into by themselves, their spouses, or their dependent children. Disclosure of contracts for goods and services, including bond counsel services, would alert the public to potential conflicts of interest involving legislators and other elected officials. The bill would not prohibit elected officials or political candidates from entering into these contracts; it simply would require that the arrangements be publicly disclosed.

SB 500 would protect the public's trust in state and local governments by prohibiting a public retirement system from paying pensions to state and local elected officials convicted of certain felonies related to their elective offices. Officials sentenced for crimes such as bribery or theft of public money should not then be allowed to receive public compensation in the form of a retirement benefit.

The bill would sufficiently protect innocent spouses by allowing a court to award all or part of the retirement benefit subject to forfeiture. Retirement benefits also would be shielded for ex-spouses and children who had a court-approved domestic relations order prior to the bill's effective date.

The requirement for a state elected official to vacate office upon a final felony conviction would draw a bright line that is currently missing in state law. While convicted felons are ineligible to run for re-election, the Texas Constitution and statutes are silent on what may be done for the duration of their terms. Allowing a convicted felon to remain in office corrodes the public's trust in state government. The expulsion requirement would not apply to legislators or state officers who were under indictment, appealing a conviction, or undergoing deferred adjudication; nor would it apply to misdemeanor convictions, which would allow officeholders to retain their elected positions after being convicted of lower-level offenses.

Opponents said

HB 501 would fail to provide meaningful disclosure of public officials' business interests by setting the threshold for disclosing a business interest involving a government contract at 50 percent. An elected official could have a much smaller stake in a valuable business that would constitute a substantial financial interest. Because legislators are in a position to enact laws that benefit certain businesses, the public should be aware if there are any in which they have a substantial interest.

SB 500 should require a final conviction before taking away an elected official's pension. This would prevent retirement systems from possibly having to calculate and refund benefits if a conviction was overturned on appeal.

More broadly, pension forfeiture laws are unjust because they represent an added penalty beyond the appropriate punishment determined by the criminal justice system. Pensions are benefits earned by officials, whose families may be relying on the income. The loss of this benefit disproportionately would impact lower-earning officials relative to those with greater economic means later in life. Enacting this bill could open the door to future legislation removing pensions for other crimes and other classes of employees.

Notes

The HRO analysis of HB 501 appeared in Part One of the May 2 *Daily Floor Report*. On May 8, the House considered SB 500 in lieu of HB 500 by Geren, the House companion, which also was analyzed in Part One of the May 2 *Daily Floor Report*.

HB 505 by Geren, effective January 8, 2019, creates new limits on the use of campaign funds by a former officeholder or candidate who becomes a registered lobbyist. At any time after the end date of the last term for which the person was elected, the person may not knowingly make or authorize a political contribution to another candidate, officeholder, or political committee from contributions the person accepted as a candidate or officeholder. This does not prohibit a person from making a political contribution or expenditure in support of the person's candidacy. The HRO analysis of HB 505 appeared in Part One of the May 2 *Daily Floor Report*.

SB 504 by V. Taylor, which died in the House Calendars Committee, would have prohibited a former member of the Legislature from engaging in certain lobbying activities during a period following the date the member left office.

HB 3305 by Larson, which died in the Senate, would have made certain campaign donors ineligible for gubernatorial appointment and limited the amount of contributions an individual could make after being appointed to office. The HRO analysis of HB 3305 appeared in Part Two of the May 5 *Daily Floor Report*.

Modifying the Dallas Police and Fire Pension System

HB 3158 by Flynn
Generally effective September 1, 2017

HB 3158 increases employee and city contributions, reduces benefits, and changes the governance structure of the Dallas Police and Fire Pension System (DPFPS), including the board's composition.

Member contributions. The bill increases the employee contribution rate from 6.5 percent or 8.5 percent to 13.5 percent of base pay and computation pay deducted on a biweekly basis, rather than monthly, for all active members.

City contributions. The bill requires the City of Dallas to make biweekly contributions that equal the greater of 34.5 percent of aggregate computation pay paid to members or an amount set forth in the bill. The city also must make additional biweekly payments of 1/26th of $13 million through the last biweekly pay period that ends after December 31, 2024.

Retirement age. The bill increases the normal retirement age for members to 58. The bill defines the normal retirement age as the earlier of:

- the attainment of 50 years of age on or before September 1, 2017, and completion of at least five years of pension service;
- the attainment of 58 years of age after September 1, 2017, and completion of at least five years of pension service; or
- completion of 20 years of pension service.

Members may retire early at age 53, rather than between ages 45 and 50, with reduced benefits.

The bill authorizes the DPFPS board to reduce the age when certain members are eligible to receive a retirement pension, including an actuarially reduced retirement pension, if the board determines that the reduction will not increase the amortization of the unfunded liabilities beyond 25 years, after giving effect to the reduction.

DROP. Upon leaving active service, a member may continue participating in the Deferred Retirement Option Plan (DROP) but is ineligible for certain disability benefits. DROP accounts are distributed as an annuity over the life expectancy of the member, and the option of receiving a lump sum distribution is removed. Members who started participating in DROP on or after September 1, 2017, may not accrue interest in their DROP account.

Starting on January 1, 2018, active service members who had participated in DROP for at least 10 years no longer will have the amount of the member's retirement pension credited to their DROP account while the member is on active service.

Cost-of-living adjustments. Under the bill, DPFPS is required to eliminate the automatic cost-of-living adjustment (COLA) to members' benefits. The pension system may only make a COLA to benefits if DPFPS is at least 70 percent funded on a market value basis before and after giving the adjustment. Active service members, including DROP participants, may not receive a COLA.

Equitable adjustments to benefits. The DPFPS board by at least a two-thirds vote of all trustees may consider and adopt rules requiring the equitable return of funds paid or credited to the benefit of a member or pensioner before September 1, 2017, including DROP interest and COLA credits. The equitable return of funds may apply to disbursed funds that exceeded reasonable amounts that should be paid or credited given the pension system's financial health when the disbursements were made. The bill establishes an adjudication process for any constitutional challenges to the equitable return of funds as authorized by the board, giving the Texas Supreme Court exclusive and original jurisdiction.

Alternative benefit plan. The bill authorizes the Dallas City Council to establish an alternative benefit plan and determine the benefits, contribution rate, funding source and amount, and administration of the plan and to require an employee first hired by the city on or after the date the alternative benefit plan is implemented to participate in the alternative benefit plan instead of the DPFPS. The city council may establish an alternative benefit plan if the DPFPS qualified

actuary determines the implementation of the alternative benefit plan will ensure continued compliance of the existing plan with applicable funding and amortization requirements. The state's Pension Review Board also must validate the qualified actuary's determination.

Escalators. The bill allows the board by rule to adopt alternative benefit multipliers for certain members' retirement pensions.

Board governance. HB 3158 directs the DPFPS board to execute its fiduciary duty to hold and administer the assets of the DPFPS fund for the exclusive benefit of its members and beneficiaries in a way that ensures the sustainability of the pension system. By January 1, 2018, the board must evaluate the process of computing pension benefits to identify potential abuse and the impact of establishing one or more alternative benefit plans, including a defined contribution plan or a hybrid retirement plan that combines elements of a defined benefit plan and a defined contribution plan, for newly hired city employees and for members who voluntarily elect to transfer to an alternative benefit plan.

Board composition. The bill increases the number of trustees on the board from seven to 11. Six trustees are appointed by the mayor, three trustees are elected by members and pensioners from a slate of nominees selected and vetted by the nominations committee, and one active or retired police officer and one active or retired firefighter is elected by DPFPS members.

Nominations committee. The bill creates a nominations committee to select trustee candidates. The DPFPS executive director presides over the committee as a non-voting member. The nominations committee includes 11 voting members from certain police and firefighter organizations.

Supporters said

HB 3158 would help prevent the Dallas Police and Fire Pension System (DPFPS) from becoming insolvent within the next 10 years. Monetary sacrifices from the City of Dallas and DPFPS members are necessary to provide a financially sustainable fund for current and future members.

The bill would restore fairness to the DPFPS by allowing the board to seek an equitable return of funds that were distributed to police and firefighter members. The excessive interest credited to a member's Deferred Retirement Option Plan account, as well as adjustments made to disability or cost-of-living adjustment benefits, were financially irresponsible actions considering the pension system was simultaneously accumulating millions of dollars in unfunded liabilities. HB 3158 would allow people to litigate equitable adjustment concerns through the bill's established adjudication process.

Opponents said

HB 3158 significantly would decrease retirement benefits for former, current, and future police officers and firefighters. Police officers and firefighters risk their lives daily to protect the public, and the City of Dallas should maintain the pension benefits they originally promised to these individuals.

The bill would allow the DPFPS board to apply retroactive equitable adjustments, also known as clawbacks, to benefits that have already been spent. Clawbacks are unfair and would financially burden thousands of active and retired police and firefighter members.

Notes

HB 3158 was not analyzed in a *Daily Floor Report.*

Preventing financial exploitation of vulnerable adults

HB 3921 by Parker
Effective September 1, 2017

HB 3921 establishes ways for financial institutions and securities professionals to report and address suspected financial exploitation of their clients who are 65 or older or have certain disabilities.

The bill defines "financial exploitation" to mean the wrongful or unauthorized taking or use of a person's money or other property or identifying information. It also includes an act or omission by a person, including through the use of a power of attorney, conservatorship, or guardianship, to obtain control through deception or undue influence over the person's property to deprive that person of ownership or benefit of it.

Reporting. The bill requires employees of financial institutions to report to the institution suspected financial exploitation of a vulnerable adult who is an account holder. Securities professionals who suspect such exploitation must notify the dealer or investment advisor whom they serve.

Financial institutions must assess any suspected financial exploitation and submit a report to the Department of Family and Protective Services (DFPS). Securities dealers or investment advisors will have to report to both DFPS and the securities commissioner, according to rules prescribed by the State Securities Board. Reports have to be submitted by the earlier of the date the financial institution, securities dealer, or investment advisor completes an assessment of the suspected financial exploitation or within five days of learning of it.

Third-party notification. HB 3921 allows financial institutions, securities dealers, or investment advisors who report suspected financial exploitation to DFPS and, if applicable, the securities commissioner to notify a third party who is reasonably associated with the vulnerable adult and who is not suspected of financial exploitation.

Holds on transactions. Financial institutions, securities dealers, and investment advisors who report suspected financial exploitation to DFPS and the securities commissioner, if applicable, may place a hold on transactions that involve the account of a vulnerable adult and are believed to be related to the suspected financial exploitation. A hold must be placed if it is requested by DFPS, law enforcement, or the securities commissioner.

A hold will expire 10 business days after a report is made. If requested by law enforcement or a government agency investigating potential exploitation, a financial institution, securities dealer, or investment adviser may extend the hold for up to 30 days. The financial institution, dealer, or investment advisor also may petition a court to extend a hold, and a court may enter an order shortening or extending it or providing other relief.

Immunity. Under the bill, those who report the suspected financial exploitation of a vulnerable adult, notify relevant third parties, or participate in a judicial proceeding arising from a report or notification are immune from civil or criminal liability. Immunity will not be granted if they acted in bad faith or with a malicious purpose.

The bill also establishes immunity from civil or criminal liability or disciplinary action resulting from an action or failure to act for those who place or do not place a hold on a transaction if they do so in good faith.

Records. HB 3921 requires financial institutions, dealers, and investment advisors, to the extent permitted by federal law, to provide records related to the suspected financial exploitation of a vulnerable adult to DFPS, law enforcement, a prosecuting attorney's office, or the securities commissioner, if applicable, when reporting suspected incidents or upon request in accordance with an investigation.

Internal policies. Financial institutions, securities dealers, and investment advisors must adopt internal policies and procedures on the reporting and assessment requirements and on holding transactions involving the account of a vulnerable adult who is believed to be subject to financial exploitation. The policies and procedures may authorize the entity to report suspected

financial exploitation to other appropriate agencies, including the attorney general, the Federal Trade Commission, and law enforcement.

Supporters said

HB 3921 would protect some of the most vulnerable adults, those who are elderly or who have a disability, from financial exploitation. The number and complexity of cases involving the financial abuse of vulnerable adults has increased significantly in recent years, and cases are believed to be substantially underreported. In addition, the projected growth in the senior citizen population, both in Texas and nationwide, could exacerbate these issues. The elderly population in particular is at high risk of financial fraud because their net worth is higher than other age groups and they may face declining cognitive abilities as they age. Financial exploitation of adults who are elderly or disabled is a significant problem that must be dealt with on many fronts, and this bill would provide new tools to address the growing need.

The bill would establish a clear framework for financial institutions and securities broker-dealers to report incidents and delay transactions without fear of liability. These professionals are in a unique position to identify possible financial exploitation, and the tools provided in HB 3921 would help them to prevent further loss or misuse of the resources of clients who are elderly or disabled, many of whom are on fixed incomes.

Opponents said

Financial professionals should not be required to report or enforce financial exploitation of vulnerable adults. This is the duty of law enforcement and the judicial system. In addition, delaying potentially legitimate transactions could infringe on the right of older or disabled adults to make decisions about their financial affairs.

Notes

The HRO analysis of HB 3921 appeared in Part Two of the May 3 *Daily Floor Report*.

Regulating the use of certain public facilities

SB 3 by Kolkhorst, First Called Session
Died in the House

SB 3, as passed by the Senate, would have required that each multiple-occupancy restroom, shower, and changing facility of a political subdivision, including a public school district or a charter school, be designated for and used only by persons of the same sex as stated on their birth certificate, driver's license, personal identification certificate, or license to carry a handgun. The bill also would have prevented those entities from adopting or enforcing an order, ordinance, policy, or other measure that:

- related to the designation or use of a multiple-occupancy restroom, shower, or changing facility;
- required a private entity to adopt, or prohibited an entity from adopting, a policy on the designation or use of the entity's multiple-occupancy restrooms, showers, or changing facilities; or
- allowed a person whose birth certificate stated the person's sex as male to participate in athletic activities designated for a person whose birth certificate stated the person's sex as female.

A private entity that leased or contracted to use a building owned or leased by a political subdivision would not have been subjected to the bill's restrictions on facility use. In addition, a political subdivision could not have required such a private entity to adopt or prohibited it from adopting a policy on facility use in the building. In awarding a contract for the purchase of goods or services, a political subdivision could not have considered whether a private entity had adopted a policy related to the designation or use of the entity's bathrooms or changing facilities.

A public school or political subdivision could have allowed a person not of the designated sex to:

- assist a person with a disability, a child under the age of 8, or an elderly person in using the facility;
- be assisted in using the facility if the person had a disability or was a child under 8 or an elderly person;
- render medical or other emergency assistance; or
- maintain the facility.

Public schools and other political subdivisions would have been allowed to provide an accommodation, including a single-occupancy restroom, shower, or changing facility or the controlled use of faculty facilities on request due to special circumstances.

The provisions of SB 3 could have been enforced only through an action instituted by the attorney general for mandamus or injunctive relief.

Supporters said

SB 3 would protect the privacy and safety of Texans in intimate public facilities such as multiple-occupancy bathrooms and locker rooms by restricting access to persons of the same sex for which the facility was designated. The bill would shut down the opportunity for predators and voyeurs to exploit a facility's lack of boundaries to prey on vulnerable individuals. Private businesses would retain the ability to designate the use of their facilities.

Certain studies and reports purporting to show negative economic impacts on jurisdictions with legislation restricting the use of public facilities and the potential impact on Texas are not supported by accurate data. For instance, the Houston economy did not suffer after voters in 2015 rejected a city ordinance that would have prohibited discrimination, including in public accommodations, on the basis of sexual orientation or gender identity.

SB 3 would provide a statewide solution to the issue of facility use by moving the authority for setting policy from individual cities or school districts to the Legislature. Having a statewide policy would protect political subdivisions from potentially costly litigation. The bill also would prevent a situation in which a school district or city adopted a policy on facility use without adequate public input.

SB 3 also would protect female athletes from unfair competition by preventing public schools from allowing a person who is biologically male from participating in athletic activities designated for girls.

Opponents said

SB 3 could put transgendered individuals at risk of harm, including discrimination and bullying, by requiring them to use a facility that does not correspond with the way they appear. It would signal that Texas is not committed to treating transgendered individuals with dignity and respect.

The state's economy would be negatively impacted due to business relocations, canceled sporting events, and reduced tourist activity. Texas should learn from the lessons of North Carolina, where a similar bill adversely impacted that state's economy until the legislation was revised. Major Texas employers have said SB 3 would hamper their ability to recruit workers.

This bill would increase discrimination without improving public safety. Laws already are in place to protect women from predators and voyeurs who might target them in a public restroom, and there is no evidence to suggest that men posing as transgender women are currently committing crimes in women's facilities.

School districts have been successfully accommodating the facility needs of individual students and should be allowed to continue implementing policies appropriate for their communities. Several major Texas cities currently have non-discrimination ordinances and no problems involving those cities' facilities have been reported.

Notes

SB 3 was approved by the Senate on July 25. It subsequently died in the House and was not analyzed in a *Daily Floor Report*.

Limiting municipal annexation powers

SB 6 by Campbell, First Called Session
Effective December 1, 2017

SB 6 divides counties and municipalities into two categories for the purpose of limiting annexation authority.

A "tier 1 county" is a county with a population of less than 500,000. A "tier 1 municipality" is a city wholly located in one or more tier 1 counties that proposes to annex an area wholly located in one or more tier 1 counties.

A "tier 2 county" is a county with a population of 500,000 or more. A "tier 2 municipality" is a city wholly or partly located in a tier 2 county or wholly located in one or more tier 1 counties that proposes to annex any part of a tier 2 county. A tier 1 county may become a tier 2 county upon a petition of the county's registered voters and approval at an election. SB 6 also specifically includes Henderson County as a tier 2 county.

Tier 1 municipalities are generally subject to preexisting annexation restrictions and processes. Tier 2 municipalities are subject to new requirements and limits under SB 6.

Tier 2 annexation with full consent. SB 6 creates a process for tier 2 municipalities to annex, fully or for limited purposes, an area upon the request of every landowner. This process requires a service agreement and public hearings.

Tier 2 annexation without full consent. Under the bill, a tier 2 municipality may annex, fully or for limited purposes, an area with a population of fewer than 200 only by a petition of more than 50 percent of the registered voters that includes at least half the landowners in the area.

A tier 2 municipality may annex an area with a population of 200 or more only by approval of a majority of registered voters in the area at an election. If more than 50 percent of the land in the area is not owned by registered voters in the area, the municipality also must receive consent through a petition signed by more than 50 percent of the landowners.

A municipality annexing an area of any population without consent of every landowner must:

- provide a list of services to be provided on the date of annexation;
- mail notice of the proposed annexation to each resident and property owner in the area; and
- hold hearings during and after the petition or election period.

If the petition or election failed to meet the given threshold, the municipality may not annex the area and may not try again for another year.

Requirements applicable to all municipalities. SB 6 allows a person residing or owning land in any annexed area, not just those in areas annexed by cities with a population of less than 1.6 million as in previous law, to enforce a service plan by applying for a writ of mandamus.

The bill applies to all municipalities several provisions that previously applied only to municipalities smaller than 1.6 million, including a requirement to negotiate with property owners for services in areas to be annexed.

Exceptions. The bill creates an exception for areas within five miles of a federal military base. A tier 2 municipality still must receive voter approval if full consent does not exist. However, instead of voting to approve or disapprove the annexation, the voters choose between either full annexation or allowing the municipality to enforce an ordinance regulating the use of the land in a manner consistent with the military's joint land use study.

Annexation of areas owned by the municipality, or areas involving certain strategic partnership agreements, navigable streams within the municipality's extra-territorial jurisdiction, or industrial districts, are not subject to the petition or election procedures.

Supporters said

SB 6 would restrict forced annexation and thereby protect the rights of residents and landowners. Under current law, Texans have limited power to stop a city from annexing their land, meaning that they can find themselves within the jurisdiction and taxing authority of a municipality when they have intentionally chosen to live outside of city limits. Taxpayers can then become responsible for paying for bonds and services for which they neither voted nor approved, which is tantamount to taxation without representation.

The bill would not prohibit cities from annexing territory to expand their tax bases. On the contrary, it would streamline the process and allow the city to make its case to the residents and landowners. Annexation may not always be a net gain for locals in the annexed area because special districts, such as municipal utility districts, can do an exceptional job of providing the same services at a lower cost, and residents should be allowed to determine for themselves the benefits of being annexed. Cities also should not rely on annexation to balance their budgets. Instead, cities should live within their means and expand only with the consent of those they would serve.

Any costs imposed on cities to comply with the bill would be minimal and easily recouped if annexation were successful. Even a small portion of new tax revenue from a single year likely would be sufficient to fund an election and administrative costs.

Limited purpose annexation has become a vehicle for cities to impose regulations on areas without providing services or representation. SB 6 would resolve this issue by requiring cities to obtain voter approval, just as with full annexation.

Landowners should be petitioned separately from residents because they are more heavily invested in living in the area than are renters, who may be short-term residents and often leave the area after a brief residency. Any increase in the property tax burden would be more directly felt by the property owners in the area and likely would have less impact on renters.

Opponents said

SB 6, by limiting a key tool held by cities, could threaten the vitality of the urban centers that propel the state's economic strength. Annexation makes sense because the vast majority of those who live just outside city limits commute into the city and rely on infrastructure, cultural attractions, and other essentials that are built and maintained by city tax revenue. Without successful annexation, cities would be unable to recoup costs and provide sufficient services, limiting economic potential. While approval could be granted at an election, residents may not realize the scope of the benefits of annexation for their surrounding community and instead may focus only on the direct costs.

Unlike most states that strongly limit annexation in the manner proposed by SB 6, Texas does not directly share state tax revenue with municipalities and places burdens on cities to provide services that are not provided at the state level. By limiting access to tax bases, the bill also could threaten essential economic development incentives funded and offered by cities. These incentives are key to staying competitive with other states and attracting businesses and new residents to Texas.

SB 6 would increase costs for cities in several ways. It would impose a direct cost for elections and essentially would require taxpayers of a city to subsidize an election outside the city's current boundaries. Also, requiring a different service agreement for each new area to be annexed would result in administrative burdens and confusion.

Under the bill, even if the broader population of residents of the area voted to agree to be annexed, landowners could exercise a veto over the approval of the residents. Land ownership should not be afforded special status or consideration in the annexation process.

Notes

The HRO analysis of SB 6 appeared in the August 11 *Daily Floor Report.*

State entity liability and sovereign immunity

SB 877 by Hancock/HB 451 by Moody/HB 1689 by Burrows
Effective September 1, 2017/Effective September 1, 2017/Died in Senate committee

The 85th Legislature considered several bills to specify the circumstances under which state entities may or may not avoid legal liability by invoking the doctrine of sovereign immunity, which provides that the state of Texas may not be sued in its own courts without its consent. This doctrine has been upheld in numerous Texas court cases, including *City of El Paso v. Heinrich* (2009) and *Wichita Falls State Hospital v. Taylor* (2003).

SB 877 specifies that self-insuring political subdivisions are liable to pay attorney's fees in workers' compensation medical benefit disputes with injured employees.

HB 451 specifies that state and local governments that employ first responders may be sued for discriminating against a first responder who had filed a workers' compensation claim.

Under the bill, state and local governments are liable for money damages in a maximum amount of $100,000 for each person discriminated against and $300,000 for each employment policy or action resulting in discrimination.

HB 1689, as passed by the House, would have allowed a self-insuring political subdivision to be sued for violating the Texas Workers' Compensation Act. The bill would have explicitly allowed these entities to be sued for sanctions, administrative penalties, and other remedies.

Supporters said

Restricting the ability of state entities to avoid legal liability by claiming sovereign immunity would help secure the same rights and opportunity for government employees to recover workers' compensation as all other employees. These employees serve the public interest and should not face unfair obstacles in seeking the representation and remedies to which they are entitled.

SB 877 would guarantee that injured state employees were not unfairly burdened in legal disputes. In order to effectively discourage state entities from violating workers' compensation law, self-insuring state and local governments should be required to pay the same reasonable attorneys' fees as other employers.

HB 451 would secure access for some of the hardest-working Texans to the same nondiscrimination protections available to other employees filing workers' compensation claims. First responders risk their lives in the interest of public safety and should not be unfairly targeted by their employers for pursuing workers' compensation claims.

Opponents said

Restricting the circumstances under which state entities could claim sovereign immunity would increase legal costs to state and local governments. Sovereign immunity is key to protecting these entities from legal expense overruns. Placing restrictions on this doctrine would encourage frivolous lawsuits and force state entities to use their limited time and resources settling legal disputes, which could decrease the quality of the public services that state and local governments provide to Texas citizens.

Notes

The HRO analysis of SB 877 appeared in Part One of the May 16 *Daily Floor Report*. HB 1689 was digested in Part One of the May 6 *Daily Floor Report*. HB 451 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Modifying public retirement systems in Houston

SB 2190 by Huffman
Effective July 1, 2017

SB 2190 reduces member benefits, increases member contributions, and determines the City of Houston's contribution rate using a cost control mechanism called the "corridor" for the Houston Firefighters' Relief and Retirement Fund (HFRRF), the Houston Police Officers' Pension System (HPOPS), and the Houston Municipal Employees Pension System (HMEPS).

Risk sharing valuation study. Every year, each fund actuary and municipal actuary separately must produce a risk sharing valuation study (RSVS) and present the findings to each other within 150 days of the end of the fiscal year. The bill requires the RSVS to calculate the unfunded actuarial accrued liability and estimate the municipal contribution rate. It also requires the fund and city to separately perform an initial RSVS based on actuarial data as of June 30, 2016.

Corridor. The initial RSVS must project the corridor midpoint (projected municipal contribution rate) for 31 fiscal years beginning July 1, 2017. The bill requires the city and the pension system boards to make changes to each pension system based on whether the RSVS estimated municipal contribution is greater than or less than the corridor midpoint. When the estimated municipal contribution rate is less than the corridor midpoint, the boards must adjust the actuarial value of assets equal to the current market value of assets, reduce increased employee contributions, accelerate the payoff of unfunded liabilities, or reduce the assumed rate of return. When the estimated municipal contribution rate is greater than or equal to the corridor midpoint, the boards must extend the amortization period of unfunded liabilities, adjust the actuarial value of assets to the current market value of assets, and increase member contributions.

Board authority. The HFRRF, HPOPS, and HMEPS boards may not increase the assumed rate of return to more than 7 percent per year, extend the amortization period of the liability beyond 30 years, allow the city's contributions to HFRRF and HPOPS to be less than the minimum or greater than the maximum city contribution rate, or allow a total city contribution in any fiscal year to HMEPS to be less than the total city contribution.

Retirement age. The bill increases the normal retirement age in which HPOPS members hired or rehired on or after October 9, 2004, are eligible to receive a monthly service pension from the earlier of 20 years of service or 60 years old plus 10 years of service to the "rule of 70" — i.e., when the sum of a member's age in years and years of service equals at least 70. The bill requires HFRRF members hired or rehired on or after July 1, 2017, to meet the rule of 70 requirements before receiving monthly service pensions.

Member contributions. The bill increases an active member's contribution rate from 8.35 percent of the HFRRF member's salary and 8.75 percent of the HPOPS member's salary to 10.5 percent. For HMEPS, the group A member contribution rate is 7 percent of the member's salary on or after July 1, 2017, and 8 percent of the member's salary on or after July 1, 2018. The group B member contribution rate is 2 percent of the member's salary on or after July 1, 2017, and 4 percent of the member's salary on or after July 1, 2018. The group D member contribution rate is 2 percent of the member's salary on or after July 1, 2017, in addition to 1 percent of the member's salary that is credited to the member's cash balance account on or after January 1, 2018.

City contributions. The bill requires the city to contribute at least biweekly to HFRRF and HPOPS an amount equal to the city contribution rate, as determined in the RSVS, multiplied by the pensionable payroll for the applicable fiscal year. For HMEPS, the city must contribute an amount equal to the sum of the city contribution rate multiplied by the pensionable payroll for the applicable fiscal year and, except in certain cases, the city contribution amount for the fiscal year.

Pension obligation bonds. Under the bill, the issuance of pension obligation bonds to fund HFRRF, HPOPS, and HMEPS unfunded liabilities requires

approval from the city's voters. The bill prohibits the city from issuing a pension obligation bond to fund the city contribution rate for any of the three pension systems.

HPOPS and HMEPS may rescind, prospectively, any or all benefit changes made effective under the bill or reestablish the deadline for delivering the pension obligation bond proceeds totaling $750 million and $250 million, respectively, if the city fails to deliver the proceeds by March 31, 2018.

DROP. The bill limits to 13 the number of years an HFRRF Deferred Retirement Option Plan (DROP) participant with 20 years of service may participate. It caps the maximum number of years an active HPOPS member may participate in DROP to 20 years. Cost of living adjustments (COLAs) occurring after July 1, 2017, will not be credited to an HPOPS member's DROP account. HMEPS members who want to participate in DROP must meet normal retirement eligibility requirements, unless the member met the eligibility requirements before January 1, 2005. HMEPS members also may qualify for DROP if they had five years of service before January 1, 2005, and the sum of the member's years of service and age in years is at least 68.

Supporters said

SB 2190 would establish a sustainable solution for the Houston Firefighters' Relief and Retirement Fund, Houston Police Officer's Retirement System, and the Houston Municipal Employees Pension System. Increasing the retirement age and contribution rates and decreasing benefits are necessary for restoring the pension systems' actuarial soundness and paying off billions of dollars in unfunded liabilities. Unfunded liabilities must be paid off to ensure the city can continue providing acceptable levels of services, including public safety, parks, roads, and libraries, among others.

The City of Houston needs immediate relief to avoid layoffs and service cuts, and switching to a defined contribution system for new employees would provide no fiscal relief to the city for decades. Switching to a defined contribution system also could trigger mass retirements, which would jeopardize public safety.

Opponents said

SB 2190 significantly would decrease retirement benefits for current and former employees. Cost of living adjustments (COLAs) help offset increased costs, such as employees' health insurance coverage. Reducing retirement benefits and suspending COLAs for certain pension system members would increase the financial burden on members' families. Spouses and dependent children of police officers and firefighters who fell in the line of duty rely on survivor benefits for their families' economic stability.

Reducing retirement benefits and increasing the retirement age might encourage police officers, firefighters, and municipal employees to leave the City of Houston to seek more financially appealing employment opportunities elsewhere. A decrease in the city's public workforce negatively could affect public safety and other city services.

Other opponents said

To further provide fiscal relief to the City of Houston, SB 2190 also should include a pathway to a defined contribution plan such as a 401k instead of the current defined benefit plan for new employees in the three pension systems.

Notes

On May 8, the House considered SB 2190 in lieu of **HB 43** by Flynn, the House companion, which had been set on the May 6 General State Calendar. The HRO analysis of HB 43 appeared in Part One of the May 6 *Daily Floor Report*.

Calling for an Article V constitutional convention

SB 21 by Birdwell - *Effective June 6, 2017*
SJR 2 by Birdwell/SJR 38 by Estes

The 85th Legislature applied to Congress for a constitutional convention under Article V of the U.S. Constitution, which provides that Congress is required to call a convention to propose constitutional amendments upon application of the legislatures of two-thirds of the states. Any amendments adopted by an Article V convention must be ratified by the legislatures of three-fourths of the states.

SJR 2 applies to Congress to call an Article V convention, for the limited purposes of proposing one or more constitutional amendments to:

- impose fiscal restraints on the federal government;
- limit the power and jurisdiction of the federal government; and
- limit the terms of office of federal officials and members of Congress.

SB 21 establishes certain procedures relating to the selection, behavior, duties, and oversight of delegates to an Article V convention.

Selection. The bill requires the Texas House of Representatives and Texas Senate, as soon as possible following the calling of a constitutional convention, to meet separately to select three House members and two Senate members to be delegates, as well as a corresponding number of alternate delegates from each chamber.

Behavior and duties. The bill prohibits delegates from accepting certain benefits from any person required to register as a lobbyist. Delegates would not be entitled to compensation for their service but would be entitled to reimbursement for necessary expenses.

Each delegate and alternate would be required to take a certain oath and file it with the Texas secretary of state before voting or taking an action as part of the delegation. SB 21 prohibits delegates from casting an "unauthorized vote," defined as a vote contrary to adopted instructions or a vote that exceeds the scope of either the Legislature's application or the convention itself. Under the bill, any unauthorized vote is considered invalid.

Oversight. The chamber that appointed a delegate could make a determination that a delegate's vote was unauthorized. Such a determination would disqualify the delegate from continuing to serve. A chamber also could recall a delegate or alternate.

If delegates are appointed, the Legislature also is required to create a 10-member Article V Oversight Committee composed of:

- the lieutenant governor and the House speaker, who would be joint chairs;
- the chairs of the House and Senate State Affairs committees; and
- three members of the House and Senate, appointed by the speaker and lieutenant governor, respectively.

The Oversight Committee would meet at the call of either joint chair. If the Legislature was not convened at the time of the Article V convention, the committee could declare a vote by an appointed delegate to be unauthorized if at least seven members of the committee voted to do so.

SJR 38 rescinds all applications for an Article V convention from Texas legislators prior to the 85th Legislature, with the exception of the application created by HCR 31 by Donaldson in 1977. The joint resolution also rescinds any application from the 85th Legislature or in the future if a convention pursuant to that application is not called within eight years.

Supporters said

SJR 2 would attend to problems that can be addressed only through an Article V convention of the states. Congress and other federal branches simply do not have an incentive to resolve some of the most

pressing issues facing the United States, including matters of fiscal responsibility and governmental accountability.

Whether or not an Article V convention is supported by the Legislature, the state needs to establish procedures in preparation to ensure that Texas has a seat at the table if it does happen. The convention will decide its rules and set its agenda regardless of how or if Texas acts on SB 21, so the state should at least establish the procedures to ensure a delegation is present to support Texas' interests.

Balanced budget amendment. Recent experience has shown that the temptation for out-of-control deficit spending is too strong for Congress to resist and must be addressed with a constitutional amendment. Excessive national debt and a large deficit burdens future generations and can be a drag on the economic health of the nation as a whole. A balanced budget amendment could be drafted such that Congress would be able to respond to recessions and crises while being effectively limited.

Limitations on federal authority. Federal regulators and lawmakers have created many restrictions on states' rights, affecting their sovereignty and ability to make laws governing their own citizens. Today, states are basically subcontractors subject to federal mandates, not the source and derivation of the power and legitimacy of the federal government. This is laid out already in the 10th Amendment to the U.S. Constitution, but states lack the ability to enforce it and protect their rights against federal overreach, which an Article V convention pursuant to SJR 2 could provide.

Term limits. SJR 2 would be the best avenue to propose an amendment limiting the terms of federal officials and elected representatives. A citizen legislature is key to both efficiency and matching the founders' vision for good government. Term limits would ensure that power was not concentrated in Washington and would create a sense of urgency among lawmakers to fix problems in the limited time available, rather than merely trying to maintain their seats in the next election.

Limits on convention. It takes only 13 states to reject the product of any Article V convention, so fears that a runaway convention would rewrite the Constitution or threaten the basic structure of government are unfounded. This constitutional requirement forces any outcome to be at least somewhat bipartisan and appeal to a large cross-section of states and voters. In short, the risk is minimal, and the problem-solving ability of an Article V convention is unmatched.

Delegate selection. SB 21 correctly would limit delegates to the convention to current members of the Legislature. Once chosen, non-legislators would have less incentive to make decisions reflecting the will of the individuals they represent. On the other hand, legislators must answer both to their fellow members and to voters. Through the oversight mechanisms established in the bill, legislators could not exercise as much influence over citizens appointed as delegates as they would be able to with a fellow member of the Legislature. The procedures and selection of delegates would be left to a future legislature, meaning that a delegation could well be bipartisan. In any case, securing the state's interests is the goal of any delegation, and both political parties have an interest in seeing Texas succeed.

Oversight. While some suggest that unauthorized votes should be subject to criminal penalties, such a move would go too far. Several other mechanisms exist to limit the possibility of rogue delegates, including the ability to recall and the possibility that a vote could be declared invalid. Furthermore, because of the sometimes vague nature of policy, this could lead delegates to be hesitant when dealing with gray areas. In any case, the state should not establish criminal penalties without first establishing that malice existed.

Opponents said

SJR 2 would be a risky and excessive approach to solving issues that can and should be addressed through the means already available under the Constitution. Elections already exist to fix the problems laid out by supporters of this measure. If a sizable bloc of voters wished to vote or act on these issues, they would do so.

The process of selecting delegates as laid out in SB 21 would result in an unrepresentative delegation from Texas. It needs stronger measures to ensure compliance with the convention's call.

Balanced budget amendment. A balanced budget amendment would eliminate the federal government's ability to respond appropriately to budget cycles during which the economy needs a boost. For instance, some economists have concluded that had a balanced budget amendment gone into effect in fiscal 2012, the effect on

the economy would have doubled the unemployment rate. Analogies that suggest the federal government should balance budgets as families do ignore the fact that individuals often take out mortgages or loans for worthy investments.

Many specific programs would be at risk if a balanced budget were to pass. Social Security might have to cut benefits even if it could draw down reserves, as drawing down the reserves would affect the balance of the budget. The Federal Deposit Insurance Corporation and the Pension Benefit Guaranty Corporation also might not be able to respond to institutional failures because liquidating their assets would affect the balance of the budget

Term limits. Applying for a convention relating to the establishment of term limits would be counterproductive and reduce the democratic influence that voters have on their representatives. A large portion of the House and Senate at any given time would hit their term limits at once, meaning that a large portion of both chambers effectively could consist of lame-duck representatives with little incentive to consider the desires of the voters. Term limits should not be established and especially should not be enshrined in the Constitution.

Limits on convention. Neither SJR 2 nor any accompanying legislation could offer sound assurance that a limitation on the convention would be effective or valid. As no Article V convention has ever been called, this is uncharted legal ground. The most direct historical comparison was the 1787 Constitutional Convention, which produced the U.S. Constitution and replaced the Articles of Confederation. In that convention, several delegates violated the commissions given to them by their states, and all directly discarded the stated purpose of the convention, which was to amend, rather than to replace, the Articles of Confederation. The state should not risk the foundation of American government for non-catastrophic issues that should be dealt with through established procedures.

Delegate selection. SB 21 should allow the Legislature to select a delegation of citizens to represent Texas before an Article V convention, rather than requiring delegates to be legislators. This would allow choice from the widest group of people, encouraging the creation of the most qualified delegation possible.

In any case, a delegation should be representative of the state's political makeup. The selection of a limited number of delegates by the Legislature would provide no incentive to include delegates from the minority party, making the probability of arriving at an accurate cross-section of the political views within Texas unlikely at best.

Other opponents said

Oversight. Representing Texas at an Article V convention is one of the most important charges a person could receive from the Legislature, and with that comes the need for strong measures to discourage unauthorized votes and rogue delegates. Therefore, criminal penalties should be attached to a determination that a vote was unauthorized, with actual jail time for delegates who knowingly went beyond the Legislature's instructions.

Notes

The HRO analysis of SJR 38 and SB 21 appeared in Part One of the May 3 *Daily Floor Report*. The analysis of SJR 2 appeared in Part One of the May 4 *Daily Floor Report*.

Health and Human Services

* Finally approved

Changing the payment structure for kinship caregivers

HB 4 by Burkett
Effective September 1, 2017

HB 4 establishes requirements for the Department of Family and Protective Services (DFPS) in disbursing monetary assistance based on income level to kinship caregivers in the relative and other designated caregiver placement program. Kinship care is provided to a child in DFPS conservatorship by relatives or fictive kin who live outside of the child's home. A relative caregiver is a person who is related to the child by blood or marriage. A fictive kin caregiver is an individual who has a longstanding and significant relationship with a child or with the child's family.

Monetary assistance requirements. HB 4 requires DFPS to provide monetary assistance of up to 50 percent of the daily basic foster care rate for a child to kinship caregivers with a family income less than or equal to 300 percent of the federal poverty level (FPL). DFPS must disburse the payments in the same way it disburses them to foster parents.

DFPS must implement a process to verify that a caregiver's family income meets the eligibility criteria for monetary assistance. The department may not provide monetary assistance to an eligible caregiver beyond one year from the date the caregiver receives the first payment. DFPS, at its discretion and for good cause, may extend payments for another six months.

If a caregiver with a family income of 300 percent or less of FPL received monetary assistance on or after June 1, 2017, but before September 1, 2017, DFPS must consider those payments as a credit against the disbursement of assistance funds and must offset the credit before disbursing cash payments under the bill.

A caregiver within this income bracket who enters into a caregiver assistance agreement with DFPS, obtains permanent managing conservatorship (PMC) of a child, and meets all other eligibility requirements may receive an annual reimbursement of up to $500 for certain expenses for each child until the earlier of the child's 18th birthday or the third anniversary of the date the person was awarded PMC of the child.

A caregiver with a family income greater than 300 percent of FPL is not eligible to receive monetary assistance.

Offense and penalty. The bill establishes a civil penalty of $1,000, as well as criminal penalties, for those who intentionally deceive DFPS by knowingly making or causing to be made false statements that allow them to enter into a caregiver assistance agreement. An offense is:

- a class C misdemeanor (a maximum fine of $500) if the person entered into a fraudulent caregiver assistance agreement for less than seven days;
- a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) if the person entered into a fraudulent caregiver assistance agreement and received monetary assistance for at least seven days but less than 31 days;
- a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) if the person entered into a fraudulent caregiver assistance agreement and received monetary assistance for at least 31 days but less than 91 days; or
- a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) if the person entered into a fraudulent caregiver assistance agreement and received monetary assistance for 91 days or more.

Report. Beginning September 1, 2018, DFPS must publish an annual report on the relative and other designated caregiver placement program that contains data on permanency outcomes for children placed with kinship caregivers. It must include the number of and reasons for disruptions in a placement and the length of time before a kinship caregiver who receives monetary assistance obtains PMC of a child.

Supporters said

HB 4 would enhance the financial ability of kinship caregivers to care for children placed in their homes. Empowering kinship caregivers with the financial tools

and resources necessary to look after a child would save the state money in the long run because the cost of a child's average stay in kinship care would be considerably less than a child's average stay in non-relative foster care.

Not only would HB 4 be a worthy investment of taxpayer dollars, it also would allow children to remain under the loving care of their relatives. Children in kinship care experience better outcomes, such as more stability, fewer placement changes, and fewer behavioral issues than children placed in non-relative care. Children in kinship care also have a better chance of exiting state custody, such as through family reunification.

Ensuring the welfare of children placed with relative caregivers is paramount. By establishing a criminal penalty for entering into a fraudulent caregiver assistance agreement, HB 4 would protect vulnerable children from exploitation by relatives whose sole purpose for caregiving lies in receiving financial assistance. The penalty provisions in the bill mirror statutory language for custody cases involving child abuse and neglect.

Opponents said

Although HB 4 would help provide adequate financial support to kinship caregivers, the bill should guarantee the monthly stipends and annual reimbursement reach families in a timely manner. The $500 reimbursement for expenses is made annually, beginning a year after the child was placed. Because kinship caregivers typically have less time than foster parents to prepare for placements, it is vital that the cost of beds, clothing, and school supplies be covered quickly.

Treating a fraudulent caregiver assistance agreement as a criminal offense would be too severe and could disrupt a child's placement more than punishment by civil penalty. Most relatives want what is best for a child, and verification processes exist to deal with instances of fraud. Fear of criminal prosecution also could deter families from taking in children. The civil penalty established in HB 4 should be sufficient to address fraudulent caregiver assistance agreements.

The federal poverty level (FPL) is based on household size and household income. To help ensure that kinship caregivers receive stipends in the appropriate amount, a child to be placed in a caregiver's home should be included in the household size before calculating the caregiver's family income as a percentage of the FPL.

Notes

The HRO analysis of HB 4 appeared in the March 1 *Daily Floor Report*.

A related bill, **SB 203** by West, which took effect May 29, removes the deadline for the Department of Family and Protective Services to enter into new permanency care assistance agreements. The HRO analysis of SB 203 appeared in Part One of the May 16 *Daily Floor Report*.

Making DFPS a stand-alone agency

HB 5 by Frank
Generally effective September 1, 2017

HB 5 separates the Department of Family and Protective Services (DFPS) from the state's health and human services system and transfers certain functions from the Health and Human Services Commission (HHSC) to DFPS. The bill also transfers certain duties from the HHSC executive commissioner to the DFPS commissioner and designates the DFPS commissioner as a governor-appointed position. HB 5 transferred responsibility for investigating child-care facilities for reports of abuse or neglect from DFPS to the department's Division of Child Protective Services, effective May 31, 2017.

The bill specifies which services will be jointly administered by DFPS and HHSC and makes the commission responsible for administering contracts with managed care providers for foster children's medical care. HB 5 also reinstates the Family and Protective Services Council as it existed before its discontinuation in 2015.

Supporters said

By making the Department of Family and Protective Services (DFPS) an executive-level agency reporting directly to the governor, HB 5 would allow the agency to make decisions more quickly and efficiently. Making DFPS a stand-alone agency would demonstrate the value of the agency and its employees and the state's commitment to protecting at-risk children. HB 5 would make clear that the DFPS commissioner was directly accountable to the governor and would clarify the chain of command. This would better protect children in the care of the state by helping to eliminate delays in child welfare decisions that could impact their well-being.

Instead of waiting for the next Sunset review of DFPS in 2023, the bill would make the structural changes that are needed now at no cost to the state. HB 5 would retain important connections between DFPS and the Health and Human Services Commission (HHSC), such as children's access to health care, while giving DFPS the independence it needs to protect children. The bill appropriately does not address caseloads and employee retention because they are budget matters that should be considered in the appropriations process.

HB 5 would give an appropriate amount of power to the DFPS commissioner, equal to the power entrusted to the HHSC executive commissioner. The DFPS commissioner would have oversight from the governor and the Legislature and stakeholder input from the reinstated Family and Protective Services Council, which would provide transparency in rulemaking. The bill would streamline management processes between HHSC and DFPS, ensuring DFPS could address its specialized needs in child welfare services. HB 5 would allow DFPS to provide services more efficiently and effectively and make quicker decisions in times of crisis, and it would smooth children's access to medical care and services through HHSC.

By requiring DFPS to enter into contracts with HHSC for certain services, HB 5 would give DFPS more power over contracts while maintaining the cost savings that come from a consolidated system.

Opponents said

Before any structural changes are made to DFPS, the agency first should address problems with high caseloads and employee retention. Making structural changes could distract from those important issues. Removing the department's current designation as a health and human services agency also would risk turning DFPS into a law enforcement-focused agency occupied mainly with investigations, rather than a service agency whose main purpose is ensuring that Texas children, people with disabilities, and senior citizens are safe and getting the services they need.

Major changes to the state's health and human services system and consolidation should be considered through the Sunset review process, not through HB 5. The 84th Legislature made careful changes to DFPS' structure in 2015, and more changes should not be made without another Sunset review.

Making DFPS a stand-alone agency could give the DFPS commissioner too much power without appropriate oversight. While HB 5 would result in less bureaucracy and faster decision making, bureaucracy can serve as an accountability mechanism. Focusing too much power in the DFPS commissioner could result in reactive decision making that might not lead to the best outcomes for Texas children.

The governor's appointment of the DFPS commissioner is not necessary to elevate the agency's standing. It is already a high-profile agency that is in the news more often than HHSC or other health and human services agencies. By unnecessarily separating DFPS from HHSC in an attempt to raise the agency's profile, HB 5 could affect foster children's access to health care infrastructure within HHSC.

The bill should allow rather than require DFPS to enter into contracts with HHSC for certain services. Collaboration is positive in some areas, but flexibility in contracting, especially in information technology, would ensure that the department's projects were not placed on the back burner. Small nonprofits also could benefit from contracting directly with DFPS rather than going through HHSC's larger contracting system.

Notes

The HRO analysis of HB 5 appeared in the March 1 *Daily Floor Report*.

Abortion reporting requirements

HB 13 by Capriglione/HB 215 by Murphy, First Called Session
Effective June 14, 2017/ Effective November 14, 2017

HB 13 requires physicians and health care facilities to report abortion complications, as defined by the bill. The reporting requirements apply to physicians at an abortion facility who either performed an abortion that resulted in a complication diagnosed or treated by that physician or who diagnosed or treated a complication resulting from an abortion performed by another physician at the facility. A physician must electronically submit to the Health and Human Services Commission (HHSC) a report on each abortion complication not later than the end of the third business day after the date on which the complication is diagnosed or treated.

The reporting requirements also apply to a health care facility that is a hospital, abortion facility, freestanding emergency medical care facility, or health care facility that provides emergency medical care. Each health care facility must electronically submit a report to HHSC not later than the 30th day after the date on which the complication is diagnosed or treatment is provided.

The report must include certain information specified in the bill and may not identify the physician performing an abortion unless that physician diagnosed or treated the complication. The report must identify the name of the physician or health care facility submitting the report. Information is confidential and not subject to open records laws, except under certain conditions. HHSC must publish on its website an annual report that aggregates on a statewide basis each abortion complication reported for the previous calendar year.

The bill adds a civil penalty of $500 per violation for physicians or health care facilities that fail to comply with the reporting requirements. The third separate violation constitutes cause for the revocation or suspension of a physician's or health care facility's license, permit, registration, or certificate or for other disciplinary action against the physician or facility by the appropriate licensing agency.

HB 215 requires a physician who performed an abortion on a woman younger than 18 years old on or after December 1, 2017, to include in her medical record and report to the HHSC how the authorization for an abortion was obtained. The physician must document whether:

- the woman's parent, managing conservator, or legal guardian provided written consent;
- the woman obtained a judicial bypass;
- the woman consented to the abortion if she had the disabilities of minority removed and was authorized under law to have the abortion without written consent required for unemancipated minors or without a judicial bypass; or
- the physician concluded that based on the physician's good faith clinical judgment a condition existed that complicated the woman's medical condition and necessitated the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function and there was insufficient time to obtain parental consent.

Information is confidential and not subject to open records laws, except under certain conditions. The information may be released for statistical purposes under certain conditions, with the consent of each person, patient, and facility identified, or to licensed medical personnel, appropriate state agencies, county and district courts, or appropriate state licensing boards for enforcement purposes. Any information released by HHSC may not identify the county in which a minor obtained a judicial bypass.

HB 215 also amends reporting requirements for physicians who perform a third trimester abortion under the circumstances allowed by Health and Safety Code, sec. 170.002(b). If a physician performed a third trimester abortion because the physician determined the fetus had a severe and irreversible abnormality, the physician must certify in writing the identified fetal abnormality. A certification under this section must be sent to HHSC, rather than the Department of State Health Services.

Supporters said

HB 13 would provide more complete and accurate disclosure of complications from abortions, providing better information about the strengths and weaknesses of Texas abortion laws. Current reporting requirements may not cover patients with complications from an abortion who are treated in a hospital emergency room or other emergency facility. The bill would protect against double reporting of abortion complications by authorizing the HHSC executive commissioner to adopt rules to reduce duplication in reporting.

Rather than negatively impacting women who were seeking abortions, the bill would provide important information about physicians who might be performing the procedure in an unsafe manner. The bill also would address concerns that Texas is undercounting incidences of complications from abortions based on studies of abortion complications in some other jurisdictions.

HB 215 would help to gather more complete data from abortions performed on minors by requiring physicians to report to the Health and Human Services Commission the methods by which a minor's authorization for an abortion was obtained. This data would provide better information for legislators and health care providers to use when evaluating state programs and crafting policy. It also would help determine whether physicians or physicians' agents were assisting minors in obtaining a judicial bypass for abortions.

The bill would adequately protect the privacy of women and physicians. The information would be confidential and could not be released except under certain conditions, including for statistical purposes, if a person, patient, or health care facility was not identified, or to certain entities for enforcement purposes.

Opponents said

HB 13 would mandate additional reporting on abortion complications without evidence that such reporting is needed to improve the safety of the procedure. By further stigmatizing a safe medical procedure, the bill would unnecessarily intrude in the doctor-patient relationship and could prevent Texas women from seeking follow-up care after an abortion.

The bill would result in duplication of data that already must be submitted to state health officials within 30 calendar days of discovery of the complication. By requiring reporting from both abortion facilities and emergency health care facilities, the bill could result in double counting of some complications.

HB 215 unnecessarily would intrude upon the doctor-patient relationship by requiring physicians to report sensitive and personal medical information. Reporting details on third trimester abortions and the methods by which a minor obtained authorization for an abortion would not address a public health need. Third trimester abortions are rare in Texas and occur only because of life-threatening medical conditions of the pregnant woman or her fetus.

Notes

The HRO analysis of HB 13 appeared in the July 27 *Daily Floor Report.*

The HRO analysis of HB 215 appeared in the August 3 *Daily Floor Report.*

Elective abortion coverage prohibitions

HB 214 by Smithee, First Called Session
Effective December 1, 2017

HB 214 prohibits certain health insurance plans from providing coverage for an elective abortion. The bill does not prevent a person from purchasing optional or supplemental coverage for elective abortion under a health benefit plan other than a qualified health plan offered through a health benefit exchange.

The bill defines "elective abortion" as an act or procedure performed after pregnancy has been medically verified and with the intent to cause the termination of a pregnancy other than for the purpose of either the birth of a live fetus or removing a dead fetus. This term excludes an abortion performed due to a medical emergency, which is a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that endangers the woman's life or places her at serious risk of substantial impairment of a major bodily function unless an abortion is performed.

Affected health benefit plans. The bill applies to certain health benefit plans issued on or after April 1, 2018, including plans offered by an insurance company, a health maintenance organization, a small or large employer, the Employees Retirement System of Texas, and the Teacher Retirement System of Texas. It also applies to a qualified health plan offered through an Affordable Care Act health benefit exchange and other plans as specified in the bill.

The bill does not apply to health benefit plan coverage provided to an enrollee for a non-elective abortion.

Authorized coverage. A health benefit plan may provide coverage for elective abortion only if:

- the coverage is provided to an enrollee separately from other health benefit plan coverage offered by the issuer;
- the enrollee pays a separate premium for elective abortion coverage in addition to the premium for other health benefit plan coverage; and
- the enrollee provides a signature for elective abortion coverage, separately and distinct from the signature required for other health benefit plan coverage provided by the issuer.

Calculating premiums. A health benefit plan issuer that provides coverage for elective abortion must calculate an enrollee's premium so that it fully covers the estimated cost of elective abortion per enrollee, determined on an actuarial basis. When calculating the premium, the issuer may not take into account any cost savings in other health benefit plan coverage that is estimated to result from coverage for elective abortion.

A health benefit plan issuer may not reduce an enrollee's premium on the basis that the enrollee has coverage for elective abortion.

Notice. The bill also requires a health benefit plan issuer that provides coverage for elective abortion to provide each enrollee, upon plan enrollment, with notice that:

- coverage for elective abortion is optional and separate from other health benefit plan coverage;
- the premium cost for coverage for elective abortion is a premium paid separately from, and in addition to, the premium for other health benefit plan coverage; and
- the enrollee may enroll in a health benefit plan without obtaining coverage for elective abortion.

Supporters said

HB 214 would allow Texans individually to decide whether or not to pay for health insurance coverage for elective abortions. Many Texans do not want to pay for abortion coverage as part of their basic health insurance plan for moral or other reasons. The bill would enhance transparency and help ensure that Texans were not paying for health insurance coverage that they did not want or need.

The bill would allow qualified health plans under the Affordable Care Act and other health benefit plans to cover elective abortions only in the case of a medical emergency, as currently defined in the Health and Safety Code. This provision would help ensure that women had coverage to terminate a pregnancy that was life-threatening and in certain other situations.

The bill would not ban elective abortions. Texans could choose to carry a supplemental insurance plan for elective abortion coverage, if needed, or they could choose a private insurance plan that provided that coverage separately from the issuer's other health coverage. Some organizations and abortion facilities offer financial assistance to low-income women who cannot afford to pay for abortions.

The U.S. Government Accountability Office in 2014 reported some health benefit plans in Texas covered elective abortion. HB 214 is necessary to ensure no public or private health plans in Texas subsidize a woman's elective abortion.

Opponents said

HB 214 would limit women's access to abortion insurance that they may or may not need by removing abortion coverage from basic health insurance plans. The unanticipated need for an abortion could occur, for example, in the case of rape or incest, or due to a woman's diagnosis with cancer or the development of a serious fetal abnormality that did not clearly meet the definition of a "medical emergency" under state law.

The bill disproportionately would affect low-income women who cannot afford to purchase supplemental insurance in addition to their basic health insurance plan. Increasing the financial burden on women could incentivize them to seek unsafe abortion methods, which could endanger their lives.

HB 214 could lead to possible exclusions on other basic health insurance coverage. Insurance companies, not the state, should decide which benefits to include in standard health insurance coverage.

Other opponents said

HB 214 is unnecessary because most health benefit plans do not cover elective abortions. The bill could discourage insurers from offering a supplemental policy to cover a procedure that is not deemed medically necessary.

Notes

The HRO analysis of HB 214 appeared in the August 8 *Daily Floor Report.*

Requiring DFPS to consider least restrictive setting

HB 1542 by Price
Effective September 1, 2017

HB 1542 requires the Department of Family and Protective Services (DFPS) to consider whether the placement of a child removed from the child's home would be in the child's best interest. DFPS must consider whether the placement:

- is the least restrictive setting;
- is the closest in geographic proximity to the child's home;
- is the most able to meet the child's identified needs; and
- satisfies any interests expressed by the child, when developmentally appropriate.

The bill defines the term "least restrictive setting" as a placement that is the most family-like setting.

HB 1542 also specifies the conditions under which the department could consider as the least restrictive setting either a foster home or a general residential operation operating as a "cottage home." For a child six years old or younger, if a suitable relative or other designated caregiver is not available as a placement for the child, the least restrictive setting for the child is considered a foster home or a cottage home, only if DFPS determines it is in the child's best interest. For children older than six, if the child cannot be placed with a relative or designated caregiver, placing the child in a foster home or a cottage home is considered the least restrictive setting.

Supporters said

HB 1542 would help children caught in the foster care system with nowhere to go by qualifying a cottage home as the least restrictive setting for a child who could not be placed with a relative or designated caregiver. The state does not have the capacity to take care of the growing foster child population in traditional foster homes and needs more options like cottage homes, which are not the same as "congregate care" and provide a unique family-like setting. While some suggest that cottage homes could produce poor outcomes for children, cottage homes provide a structured environment for children to cultivate healthy and trusting relationships with caregivers and other adults. The expanded use of cottage homes also could help open up beds in other homes and facilities, which ultimately would help the highest risk children find placement.

The bill would not create expenses for the state because its language is permissive and would not require placing children in cottage homes. Relatively few children in foster care in Texas are located at general residential operations, which do not make up a significant cost for the state. Also, several faith-based homes choose not to take money from the state.

Concerns that HB 1542 would incorrectly define least restrictive settings for foster children are unfounded because federal law leaves the definition to the discretion of the Legislature.

Opponents said

HB 1542 incorrectly would define the least restrictive environment for a child as a cottage home, which is congregate care and not a family-like environment. Federal law already has specifically defined least restrictive settings, and cottage homes should not be equated with foster homes. Group care through these homes can lead to poor outcomes for kids, especially younger children, because of the constant cycle of parents in and out of the home. Cottage homes also can be more expensive than traditional foster care and could cost the state more in reimbursements.

The bill would not affect children with the greatest needs who were spending nights in Child Protective Services offices because cottage homes accept only easy-to-place children.

Notes

The HRO analysis of HB 1542 appeared in Part Two of the May 5 *Daily Floor Report*.

Religious rights of child welfare services providers

HB 3859 by Frank
Effective September 1, 2017

HB 3859 prohibits a child welfare services provider from being required to provide any service that conflicts with the provider's sincerely held religious beliefs. The bill defines "child welfare services" to include recruiting foster or adoptive parents and placing children in foster or adoptive homes, counseling children or parents, and providing residential care, among other services.

The bill prohibits a governmental entity or any person that contracts with the state or operates under governmental authority to refer or place children for child welfare services from discriminating or taking any adverse action against a child welfare services provider on the basis, wholly or partly, that the provider:

- has declined or will decline to provide, facilitate, or refer a person for child welfare services that conflict with, or under circumstances that conflict with, the provider's sincerely held religious beliefs;
- provides or intends to provide children under the provider's care with a religious education, including placing them in a private or parochial school;
- has declined or will decline to provide, facilitate, or refer a person for abortions, contraceptives, or drugs, devices, or services that are potentially abortion-inducing; or
- refuses to enter into a contract that is inconsistent with or would in any way interfere with or force a provider to surrender the rights created by the bill.

HB 3859 defines "adverse action" to include decisions related to funding, contracting, licensing, and limiting the ability of a person to engage in child welfare services.

A provider who declines to provide a child welfare service must provide written information directing the person seeking services to information on other service providers. The bill requires the state or any person that operates under governmental authority to refer or place children for child welfare services to ensure the availability of a secondary services provider in the catchment area or nearby.

A provider may assert an actual or threatened violation of the rights contained in the bill as a claim or defense in a judicial or administrative proceeding and is entitled to recover declaratory or injunctive relief. The bill waives sovereign and governmental immunity to suit except as provided under the U.S. Constitution.

Supporters said

HB 3859 would sustain and build the network of faith-based providers of foster care, adoption, and other services for abused and neglected children by allowing them to exercise their religious beliefs while providing these services. Texas has a shortage of foster homes, and the state traditionally has relied upon faith-based institutions to help support abused and neglected children. Some religious groups say they have ended services to foster children due to the threat of litigation, and the bill would provide these groups with new legal protections.

The bill would enable faith-based providers to decline to offer certain services while requiring the state to ensure that alternate providers willing to provide the services were available. Members of the LGBT community would not be excluded from participating in the child protective services system as foster or adoptive families, and the bill would help Texas maintain a robust network of foster families available to accommodate children of diverse cultural backgrounds and beliefs.

Opponents said

HB 3859 would allow organizations to use religious beliefs to discriminate against certain individuals wishing to serve as foster or adoptive families. Every organization and individual providing services to abused and neglected children should be required to play by the same rules. Gay and lesbian foster and adoptive parents, as well as unmarried individuals, have successfully provided homes for many Texas children, and the state should be encouraging more of these families to participate in the child protective services system at a time of great need.

Notes

The HRO digest of HB 3859 appeared in Part Two of the May 6 *Daily Floor Report*.

Prohibiting support of abortion with local taxes

SB 4 by Schwertner, First Called Session
Died in the House

SB 4, as passed by the Senate, would have prohibited a governmental entity, including the state, a state agency, or a political subdivision, from entering into a taxpayer resource transaction or contract with an abortion provider or the affiliate of an abortion provider.

The bill would have defined "abortion provider" as a licensed abortion facility or an ambulatory surgical center used to perform more than 50 abortions in any 12-month period or an affiliate of these providers. A facility would not have been considered an abortion provider based solely on the performance of an abortion there in a medical emergency, as defined in current law. Under the bill, an "affiliate" would have meant a person or entity who entered into a legal relationship that was created or governed by at least one written instrument that demonstrated:

- common ownership, management, or control;
- a franchise; or
- an agreement authorizing the use of a brand name or other registered identification mark.

Under SB 4, a "taxpayer resource transaction" would have been a transaction between a governmental entity and a private entity that provided to the private entity something of value derived from state or local tax revenue, regardless of whether the governmental entity received something of value in return. Such a transaction would have included a sale, purchase, lease, or donation, as well as advocacy or lobbying on behalf of an abortion provider or affiliate, but would not have included the provision of basic public services, including fire and police protection and utilities, to an abortion provider or affiliate.

The bill's prohibition would not have applied to transactions or contracts with:

- a licensed general or special hospital;
- a licensed physician's office that performed 50 or fewer abortions in any 12-month period;
- a state hospital;
- a public or private higher education teaching hospital; or
- an accredited residency program providing training to resident physicians.

The attorney general would have been authorized to bring an action to enjoin a violation of the prohibited transactions or contracts and would have waived sovereign or governmental immunity, as applicable, of a governmental entity to suit and from liability.

Supporters said

SB 4 would protect taxpayers by prohibiting state and local governments from entering into contracts with abortion providers and their affiliates. Many Texans do not want taxpayer dollars to fund abortion services for moral or other reasons. The bill would close loopholes to ensure that taxpayers were not inadvertently subsidizing abortion services.

The bill would provide greater transparency and accountability to contracts and transactions entered into by cities, counties, and hospital districts. Although the Legislature has included riders in the fiscal 2018-19 budget to prevent state funds from flowing to abortion providers and their affiliates, this bill would create a statutory ban on the use of public funds to subsidize abortions, which are opposed by many Texans.

Opponents said

SB 4 would limit the ability of cities, counties, and hospital districts to select the best providers to deliver health services, even if those providers did not themselves perform abortions. The bill could lead to local governmental entities excluding health care providers with the most experience from providing essential services, such as reproductive health care and cancer screenings. Decisions about contracting with health care providers should be left to local elected officials, who are accountable to their voters.

Notes

SB 4 was approved by the Senate on July 26 but not referred to a committee in the House. It was not analyzed in a *Daily Floor Report*. A companion bill, **HB 14** by Springer, died in the House Calendars Committee.

Requirements for the disposition of fetal tissue

SB 8 by Schwertner
Generally effective September 1, 2017

SB 8 adds requirements for the disposition of fetal tissue remains, bans the donation of fetal tissue from an elective abortion, and bans the sale of fetal tissue. It also prohibits certain abortion procedures.

Fetal tissue remains. Beginning February 1, 2018, the bill requires health care facilities that provide health or medical care to a pregnant woman to dispose of embryonic and fetal tissue remains by interment, cremation, incineration followed by interment, or steam disinfection followed by interment. Ashes may be interred or scattered in any manner as authorized by law for human remains and could not be placed in a landfill. The bill specifies that embryonic and fetal tissue remains are not pathological waste under state law.

The Department of State Health Services (DSHS) must create a registry of participating funeral homes and cemeteries willing to provide free common burial or low-cost private burial and of private nonprofit organizations that register to provide financial assistance for costs associated with the burial or cremation. DSHS may suspend or revoke the license of a health care facility that violates the bill's requirements. An entity that violates the disposition requirements is liable for a civil penalty of $1,000 per violation.

Fetal tissue donation. The bill limits the donation of human fetal tissue and bans it in most instances, including tissue obtained from an elective abortion. "Human fetal tissue" is defined as any gestational human organ, cell, or tissue from an unborn child. The term does not include supporting cells or tissue derived from a pregnancy or, unless derived from an elective abortion, the umbilical cord or the placenta.

The donation ban does not apply to fetal tissue obtained for diagnostic or pathological testing or for a criminal investigation. The donation of fetal tissue or human tissue obtained during pregnancy or at delivery of a child is allowed, provided the tissue is obtained by an accredited public or private institution of higher education for use in approved research. Cell lines derived from fetal or human tissue existing on September 1, 2017, also may be used in approved research. Only an authorized facility may donate human fetal tissue, and the facility must obtain written, voluntary, and informed consent of the woman from whose pregnancy the fetal tissue is obtained.

The bill makes it a criminal offense for a person to offer a woman monetary or other consideration to have an abortion for the purpose of donating human fetal tissue or consent to the donation of fetal tissue or to knowingly or intentionally solicit or accept tissue from a fetus gestated solely for research purposes. A violation is a class A misdemeanor punishable by a maximum fine of $10,000.

Fetal tissue sale. The bill prohibits the purchase and sale of human fetal tissue, an offense punishable as a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000).

Banned procedures. SB 8 prohibits certain abortion procedures from being performed in Texas.

Dismemberment abortion. The bill defines "dismemberment abortion" as an abortion in which a person, with the purpose of causing the death of an unborn child, dismembers a living unborn child and extracts the pieces from the uterus through the use of certain instruments. The procedure is banned unless necessary in a medical emergency. A woman on whom a dismemberment abortion is performed, an employee or agent acting under the direction of a physician who performs a dismemberment abortion, or a person who fills a prescription or provides equipment used in such an abortion does not violate the ban. A violation of the ban is a state-jail felony.

Partial-birth abortion. The bill defines "partial-birth abortion" and bans a physician or other person from knowingly performing such a procedure unless necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-threatening physical condition caused by or arising from the pregnancy. A person who performs the prohibited procedure commits a state-jail felony.

SB 8 allows certain individuals, including the father of the fetus or a parent of the mother of the fetus if the mother was younger than 18, to bring a civil action. Damages may be recovered for physical injury, mental anguish, and emotional distress, and relief may include exemplary damages equal to three times the cost of the procedure. A physician who is the subject of a criminal or civil action may request a hearing before the Texas Medical Board on whether the prohibited procedure was necessary to save the life of the mother as allowed under the bill.

Other provisions. SB 8 requires a physician who performs an abortion at an abortion facility to complete and submit monthly, rather than annually, a report to DSHS on each abortion. DSHS is required to establish and maintain a secure electronic reporting system for the submission of the monthly reports. The bill also contains provisions related to construction, judicial review, and severability of the bill.

Supporters said

SB 8 would affirm the state's profound respect for life by banning certain procedures and requiring fetal remains to be buried or cremated. The fetal tissue disposition requirements would recognize the dignity of the unborn by ending a practice of disposing of fetal tissue in landfills. The disposition requirements would not affect a woman's ability to access abortion services. The state is appealing a decision by a federal judge to block a similar fetal disposition rule promulgated by the Department of State Health Services (DSHS).

The ban on dismemberment abortions would prevent an inhumane and unnecessary procedure by prohibiting doctors from removing a fetus from the uterus before its heart had stopped. This prohibition would not impose additional risks on a patient or burdens on a physician because there are methods available to stop a fetal heartbeat before extraction. The ban on partial-birth abortions would align state and federal statutes on a procedure that has been prohibited under federal law since 2003, giving Texas authority to prosecute violations. The ban was upheld by the U.S. Supreme Court in 2007.

The bill also would ban donations of fetal tissue from elective abortions to prevent situations in which abortion procedures could be altered to harvest specific fetal parts. It would allow fetal tissue to be donated in an ethically responsible way from a woman who had suffered a miscarriage and provided written consent for the donation to a university hospital for use in approved research.

SB 8 would ban the sale of fetal tissue from elective abortions to address public concerns about how such tissue is being procured. Although federal law bans the sale of fetal tissue, the bill would create a state ban that the Texas attorney general could enforce.

Opponents said

SB 8 would present more barriers to a woman choosing to terminate a pregnancy by prohibiting a standard method of second-trimester abortions and requiring costly burials or cremations for fetal remains. The requirement that fetal remains be buried or cremated could interfere with a woman's autonomy and decision-making. In January 2017, a federal judge in Austin blocked a similar rule promulgated by DSHS from going into effect, saying the rule could be difficult for providers to comply with and that it inappropriately replaced tissue-disposal regulations that had caused no health problems.

The bill would negatively impact the safety of second-trimester abortions by prohibiting a commonly used method known as dilation and evacuation. A requirement for a doctor to induce fetal demise before extraction could pose risks to a woman's health and make it difficult for doctors to provide second-trimester abortions without potentially facing criminal charges.

The ban on fetal tissue donations would halt work at some Texas research universities to find cures to diseases such as Zika and conditions that impact babies born prematurely. The ban on donated tissue from abortions would intrude on a decision that the woman involved should be allowed to make.

SB 8 unnecessarily would duplicate existing federal bans on the sale of fetal tissue and on partial-birth abortions.

Other opponents said

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

Notes

The HRO analysis of SB 8 appeared in Part One of the May 19 *Daily Floor Report*.

SB 8's ban on "dismemberment abortions" was blocked from taking effect on September 1 by a federal judge in Austin. The judge heard evidence on the issue in early November and ruled in favor of abortion providers who challenged SB 8. The state is appealing the ruling.

Expanding community-based foster care services

SB 11 by Schwertner
Effective September 1, 2017

SB 11 transfers certain case management services from the Department of Family and Protective Services (DFPS) to qualified single source continuum contractors (SSCCs) providing community-based foster care services within contracted areas.

Community-based care. SB 11 changes the name of foster care redesign to community-based care. Under the bill, DFPS maintains temporary or permanent custody of a child, while an SSCC oversees the case management services of a child in a catchment area, which is defined as a geographic area for providing child protective services that is identified as part of the community-based foster care redesign. Case management services include:

- caseworker visits;
- family and caregiver visits;
- permanency planning meetings;
- development and revision of child and family plans of service;
- coordination and monitoring of services required by the child and the child's family;
- court-related duties; and
- other services DFPS deems necessary.

Qualifications. To qualify as an SSCC, an entity must be a nonprofit entity that has an organizational mission focused on child welfare or a governmental entity. The bill requires DFPS to develop a readiness review process to determine an SSCC's ability to provide foster care services.

SSCC contract. SB 11 requires a contract with an SSCC to contain certain provisions, including, among others, those that:

- establish a timeline for implementing community-based care in the catchment area;
- require the SSCC to maintain a diverse network of service providers that can accommodate children from different cultural backgrounds;
- allow DFPS to conduct a performance review of the SSCC, following which the department may financially reward or penalize the contractor based on its performance;
- require the SSCC to provide preliminary and ongoing community engagement plans to ensure communication and collaboration with local stakeholders in the catchment area; and
- require the SSCC to comply with any applicable court order issued by a court of competent jurisdiction.

The bill requires DFPS to create the case management vendor quality oversight and assurance division to oversee contract compliance and outcomes on performance measures by vendors that provide community-based care.

Expanding community-based care. By December 31, 2019, DFPS must identify up to eight catchment areas that are best suited to implement community-based care and evaluate the implementation process and SSCC performance in each area. The bill allows DFPS to change the geographic boundaries of catchment areas to align with specific communities and requires DFPS to ensure the continuity of services for children and families during the transition to community-based care in a catchment area.

Health screenings. The bill requires certain children who are in DFPS custody for more than three business days to receive a medical examination by the end of the third day. A health care provider may not administer a vaccination in the medical examination without parental consent, unless it is determined a tetanus vaccine is necessary in an emergency situation.

A child-placing agency or general residential operation must ensure children in DFPS conservatorship receive a complete early and periodic screening, diagnosis, and treatment checkup as specified in their contracts with the Health and Human Services Commission. The bill also requires managed care organizations under the STAR Health program to ensure enrollees receive these screenings and checkups.

Investigations of child abuse, neglect, and exploitation. The bill requires DFPS to transfer the investigation duties of the Child-Care Licensing (CCL) division to its Child Protective Services (CPS) division.

The bill repeals the abuse, neglect, and exploitation definitions used by CCL at DFPS under Family Code, sec. 261.401. DFPS instead must adopt the definitions under Family Code, sec. 261.001 for all of the child abuse, neglect, or exploitation investigations conducted by CPS.

Supporters said

SB 11 would increase foster care capacity, strengthen accountability and transparency, and promote a foster child's best interests within local communities.

The bill would increase the state's ability to provide community-based care services to foster children with diverse needs in multiple geographic regions. The Department of Family and Protective Services (DFPS) experiences high caseworker turnover rates and lacks efficiency and local decision-making to find placements for children in foster care. Transferring case management services to an SSCC and expanding community-based care to other regions would allow more children to be placed within their home communities and experience better outcomes.

SB 11 would strengthen accountability by requiring an SSCC to undergo an extensive readiness review process before the transfer of case management services or the expansion of community-based care occurred. During the readiness review process, an SSCC would have to disclose a plan explaining how the contractor would avoid or eliminate conflicts of interest. The creation of a quality assurance division would increase transparency by requiring SSCCs to meet specific performance-based outcomes.

Opponents said

SB 11 would reduce the role of Child Protective Services (CPS) in the foster care system by outsourcing case management services to an SSCC. Enabling an SSCC to provide case management services could lead to conflicts of interest, which could interfere with what is best for the child.

The Legislature should give DFPS more time to use its monetary and staff resources to improve outcomes for foster children before transferring case management services to SSCCs. DFPS recently received emergency funding to hire additional CPS caseworkers, increase caseworkers' salaries, and reduce caseworker turnover rates. Additional caseworkers would help DFPS meet the current foster care redesign goals the Legislature has set forth.

Notes

The HRO analysis of SB 11 appeared in the May 18 *Daily Floor Report*.

HB 249 by Hernandez, effective September 1, 2017, requires DFPS to transfer the responsibility of conducting investigations of alleged abuse, neglect, or exploitation occurring at certain child-care facilities to its Child Protective Services division. The HRO analysis of HB 249 appeared in Part Two of the April 27 *Daily Floor Report*.

Creating procedures for in-hospital DNR orders

SB 11 by Perry, First Called Session
Effective April 1, 2018

SB 11 specifies when a do-not-resuscitate (DNR) order may be considered valid, adds notification requirements related to DNR orders, provides a procedure for revoking a DNR order, specifies when a physician or other entity would not be criminally or civilly liable, and creates a criminal offense, among other provisions.

SB 11 defines the term "DNR order" to mean an order instructing a health care professional not to attempt cardiopulmonary resuscitation (CPR) on a patient whose circulatory or respiratory function has ceased. The bill applies to DNR orders issued in a health care facility or hospital, not to an out-of-hospital DNR order as defined by Health and Safety Code, sec. 166.081. Under the bill, a DNR order takes effect at the time it is issued, provided it is placed in the patient's medical record as soon as practicable.

Under the bill, a DNR order is valid only if the patient's attending physician issues the order, the order is dated, and the order complies with:

- the written and dated directions of a competent patient;
- the oral directions of a competent patient delivered to or observed by two competent adult witnesses, at least one of whom is not the attending physician or certain other employees of the facility treating the patient;
- the directions in a properly executed advance directive;
- the directions of a patient's legal guardian or agent with medical power of attorney; or
- a treatment decision that follows the procedure under state law for when a person has not executed or issued a directive and is incompetent or incapable of communication.

To be valid, the DNR order also may not be contrary to the directions of a patient who was competent at the time the patient conveyed the directions and, in the reasonable medical judgment of the patient's attending physician, the patient's death is imminent and the DNR order is medically appropriate.

The bill creates a class A misdemeanor offense (up to one year in jail and/or a maximum fine of $4,000) for a physician or other person who intentionally conceals, cancels, effectuates, or falsifies another person's DNR order or who intentionally conceals or withholds personal knowledge of another person's revocation of a DNR order. A physician, health care professional, health care facility, hospital, or entity acting in good faith cannot be civilly or criminally liable or subject to review or disciplinary action by a licensing agency for issuing a DNR order or causing CPR to be withheld or withdrawn from a patient in accordance with a DNR order. These entities also cannot be civilly or criminally liable or subject to review or disciplinary action for failing to act in accordance with a DNR order if they did not have actual knowledge of the order's existence.

Supporters said

SB 11 would give patients more input into the process of issuing a do-not-resuscitate (DNR) order and help ensure that a patient's family or authorized representative received appropriate notification of the existence of a DNR order. Current law does not provide adequate direction for the execution of a DNR order within a health care facility or hospital and could allow one to be issued against a patient's will, possibly resulting in death. The bill would help ensure that a patient's wishes were followed in these facilities and that patients received resuscitation if they desired it.

The bill represents a compromise that would balance patient protections with other concerns. It would provide civil, criminal, and licensure liability protections for a person, including a health care facility or hospital, who acted in good faith. The bill makes it clear that a failure to disclose a DNR order would not affect the order's validity. The patient protections in the bill that prevent a physician from issuing a DNR order without patient input would help prevent a physician or other medical professional from making a value judgment about a patient's life.

SB 11 would provide important clarifications in statute for in-hospital DNR orders. It would specify that a physician could issue a DNR order for a patient if the patient's death was imminent and the order was medically appropriate and not contrary to the patient's wishes. This provision would allow physicians to make necessary spur-of-the-moment decisions while still following the patient's wishes.

The bill would protect patients who issued oral DNR orders by requiring that at least one of the two witnesses not be an employee of the attending physician or of the patient's health care facility. This requirement would help ensure that the order accurately reflected the patient's wishes, rather than those of the health care facility.

The bill would apply existing law on decision-making surrogates to in-hospital DNR orders and, as in current law, would allow a family member to be involved in a patient's care only if the patient was incapacitated and did not have a legal guardian or an agent under a medical power of attorney.

Opponents said

SB 11 could have unintended consequences and interfere with the ability of patients and physicians to make appropriate decisions regarding end-of-life care. Physicians sometimes need to make serious decisions on the spur of the moment, and the bill could make it more difficult for physicians to make ethically and medically appropriate decisions in the patient's best interest. Ambiguity in the bill language, such as a lack of certain definitions, also could increase liability issues for physicians.

The bill also could make it difficult for patients to issue an oral DNR order by requiring a patient to have two witnesses, at least one of whom could not be the patient's physician or employed by the health care facility. Patients could have trouble meeting these requirements.

SB 11 also could allow for the invasion of a patient's privacy by requiring certain relatives to be notified of the patient's DNR order. While some patients may want their families involved in their end-of-life care, others may not. The bill should make it easier for patients to prohibit certain individuals from being involved in their care, especially if those individuals could have the power to change a DNR order if the patient became incapacitated.

Notes

The HRO analysis of SB 11 appeared in the August 12 *Daily Floor Report.*

Continuing the maternal mortality task force

SB 17 by Kolkhorst, First Called Session
Effective August 16, 2017

SB 17 continues the state's Maternal Mortality and Morbidity Task Force until September 1, 2023. The task force, which had been scheduled to expire on September 1, 2019, studies and reviews pregnancy-related deaths and trends in severe maternal morbidity, determines the feasibility of studying cases of severe maternal morbidity, and makes recommendations to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity.

The bill expands the task force's charges to include the study and review of new topics related to pregnancy-related deaths. It increases the membership of the task force from 15 to 17 members, opens certain task force meetings to the public, and requires the Health and Human Services Commission (HHSC) to consult with the task force to provide physicians and certain others with screening and educational materials on domestic violence and substance use, including opioid drug use.

Under the bill, if the task force does not review all cases of pregnancy-related deaths in Texas, the ones it reviews must be randomly selected. The Department of State Health Services (DSHS) must statistically analyze aggregated data of pregnancy-related deaths and severe maternal morbidity to identify rates or disparities in addition to trends.

SB 17 requires DSHS to collaborate with the task force to promote the use of certain informational materials, including best practice procedures, among Texas health care providers and requires HHSC to study whether the use of these best practices could be added as a quality indicator for quality-based payments under Medicaid. HHSC must produce a report on pregnancy-related deaths, severe maternal morbidity, and treatment of postpartum depression.

Supporters said

SB 17 would help address increased maternal mortality and morbidity rates in Texas by continuing the Maternal Mortality and Morbidity Task Force until 2023. Studies have found that Texas has a higher rate of maternal mortality and morbidity than most other states and many industrialized countries. Continuing the task force through 2023 would allow the state to address more directly the causes of pregnancy-related deaths. Expanding the task force's duties also would implement one of the governor's priorities for the special session.

The Department of State Health Services (DSHS) uses task force findings to decide what kind of public health interventions and prevention initiatives would best prevent maternal mortality and morbidity. It also uses the information to decide how to leverage and target existing programs. Allowing the task force to continue reviewing cases would help DSHS make decisions on prevention programs going forward.

The bill also would help combat the effects of postpartum depression. Requiring the Health and Human Services Commission to evaluate options for treating postpartum depression in economically disadvantaged women could lead to improved access to mental and behavioral health screenings before and after childbirth and could reduce suicide.

The Maternal Mortality and Morbidity Task Force works best as a statewide task force, bringing together physicians, DSHS staff, community advocates, registered nurses, medical examiners, ob-gyns, researchers, nurse-midwives, social workers, and other experts in pregnancy-related deaths to work on this issue. Continuing the task force would demonstrate the importance Texas places on reducing its rates of maternal mortality and morbidity.

Opponents said

Continuing the Maternal Mortality and Morbidity Task Force is unnecessary because a non-governmental entity, such as a private research institution, would be better suited to undertake the functions of the task force.

Notes

The HRO analysis of SB 17 appeared in the August 13 *Daily Floor Report*.

Continuing five health-related boards until 2019

SB 20 by V. Taylor, First Called Session
Effective August 11, 2017

SB 20 continues until September 1, 2019, the Texas Medical Board, the Texas State Board of Examiners of Psychologists, the Texas State Board of Examiners of Marriage and Family Therapists, the Texas State Board of Examiners of Professional Counselors, and the Texas State Board of Social Worker Examiners. These boards were scheduled to expire in Texas law on September 1, 2017.

Supporters said

By extending the Sunset date for five regulatory boards, including the Texas Medical Board, to September 1, 2019, SB 20 would help ensure that physicians and other professionals licensed by these boards continued to receive appropriate licensure and oversight in Texas. The bill's language is specific to the governor's special session proclamation, and any additional changes to these boards would be beyond the scope of the bill.

Opponents said

To avoid duplication of efforts by the Sunset Advisory Commission, SB 20 should extend the Sunset date for these boards for the recommended 12 years and implement the remaining Sunset recommendations from the 2016-17 review cycle.

Notes

The HRO analysis of SB 20 appeared in the August 10 *Daily Floor Report*.

Continuing the Women's Health Advisory Committee

SB 790 by Miles
Vetoed by the governor

SB 790 would have extended from September 1, 2017, to September 1, 2019, the statutory expiration date of the women's health advisory committee, which provided recommendations to the Health and Human Services Commission on the consolidation of state-administered women's health programs.

Supporters said

By extending the women's health advisory committee to 2019, SB 790 would help ensure that the consolidated women's health program at the Health and Human Services Commission (HHSC) continued to receive needed support in meeting the demographic, geographic, and other challenges the program may face. The consolidated Healthy Texas Women Program was just implemented in July 2016, and it is too early to determine whether it will need major changes before the advisory committee is scheduled to terminate in 2017.

The committee was created in 2015 to address concerns that health care providers who offered women's health services through HHSC and former Department of State Health Services programs might not have their input adequately considered in the development of the consolidated women's health program at HHSC. The 2015 consolidation was the third major overhaul of these services since 2011, and provider input is needed to ensure that the program adequately provides services to women across Texas, including in rural areas.

Extending the advisory committee would allow it to review data on program utilization, cost per client, clients served, provider network adequacy, and access in rural areas. Data still are being gathered. As the program rolls out, the committee is needed to help providers get information about billing, coding, and other changes to the program. It also provides an opportunity for the public to interact with HHSC on women's health care and for stakeholders and experts to work on these issues.

While the Sunset Advisory Commission recommended consolidating duplicative advisory committees, the women's health advisory committee has a unique purpose, and its role cannot be performed by a different committee. The committee has been effective because of its composition, which includes federally qualified health centers and providers who have on-the-ground knowledge in women's health.

Opponents said

One of the goals of the HHSC Sunset review in 2015 was to consolidate statutory advisory committees to permit the agency to function more effectively. Continuing the women's health advisory committee until 2019 would undo part of the consolidation work done by the 84th Legislature, as the committee has done what it was created to do.

Notes

The HRO analysis of SB 790 appeared in Part One of the May 19 *Daily Floor Report*.

Revising telemedicine and telehealth requirements

SB 1107 by Schwertner
Generally effective May 27, 2017

SB 1107 removes a requirement in Texas law that a patient and a physician have a face-to-face consultation to use telemedicine. It specifies that the standard of care for a telemedicine medical service or telehealth service is the same standard that would apply to the same health care service or procedure in an in-person setting. The bill prohibits an agency with regulatory authority over a health professional from adopting rules for telemedicine medical services or telehealth services that would impose a higher standard of care.

SB 1107 defines a valid health practitioner-patient relationship for a telemedicine medical service as one in which the practitioner complies with the standard of care in the bill and:

- has a preexisting practitioner-patient relationship according to rules on valid prescribing adopted jointly by the Texas Medical Board, the Texas Board of Nursing, the Texas Physician Assistant Board, and the Texas State Board of Pharmacy;
- communicates, regardless of the method of communication, with the patient in a way that follows a call coverage agreement established in accordance with Texas Medical Board rules with a physician requesting coverage of medical care for the patient; or
- provides the telemedicine medical services through the use of synchronous audiovisual interaction between the practitioner and the patient in another location, asynchronous store-and-forward technology using certain clinical information or medical history, or another form of audiovisual telecommunication technology that allows the practitioner to comply with the standard of care specified in the bill.

The bill prohibits the use of telemedicine medical services for the prescription of an abortifacient or any other drug or device that terminates a pregnancy.

SB 1107 requires a health practitioner who provides a patient with telemedicine medical services to provide the patient with guidance on appropriate follow-up care. Within 72 hours after providing services, the health practitioner must provide the patient's primary health care physician with the patient's medical record or an explanation of the patient's treatment if the patient consents and the patient has a primary care physician.

The bill also adds new definitions for the terms "telemedicine medical service," "telehealth service," and "store and forward technology" and specifies that provisions governing telemedicine and telehealth services in Occupations Code, ch. 111, which the bill amends, do not apply to mental health services.

Supporters said

SB 1107 would update standards related to telemedicine in statute and increase access to health care through the use of telemedicine technology. It also would update outdated definitions related to telemedicine and require health care providers to observe the same standard of care for telemedicine as an in-person service. The bill would protect patients and providers adequately while creating a clearer and more accountable regulatory structure for establishing a valid health provider-patient relationship through telemedicine.

SB 1107 would improve access to care in rural areas, allow patients to benefit from technological advancements, and increase the quality of care. Telemedicine is a tool for health providers to use, not a separate service. Telemedicine visits would not take the place of in-person visits but would be available as a tool for both providers and patients. Primary care providers could use telemedicine as part of their existing practice to see new or existing patients on days and times they otherwise would not be in the office.

Health care providers that have used telemedicine under the former regulatory structure reported a decrease in emergency room visits, unnecessary doctor's office visits, and worker absenteeism. The update to the telemedicine and telehealth regulatory structure in SB 1107 could further increase health care-related savings for the state.

The bill also would adopt a technology-neutral definition of "telemedicine" and "telehealth" and would allow physicians to use their discretion when deciding to treat a patient through telemedicine, as they would when treating a patient in person. If a symptom could not be treated appropriately through telemedicine or telehealth, the patient would have to see a provider in person. Texas law requires a patient to see a health care provider in person if the symptoms do not resolve within 72 hours, helping to ensure that patients would continue to be treated properly.

Opponents said

SB 1107 could expand the allowed uses of telemedicine and, in so doing, make it harder for Texans in rural areas and those in minority communities to see a doctor in person. There already is a shortage of physicians and other health providers in Texas, and telemedicine is not an adequate substitute for an in-person doctor visit or an established primary care physician. By expanding the use of telemedicine, the bill also could lead to increased misdiagnoses by health care providers.

Notes

SB 1107 was not analyzed in a *Daily Floor Report*.

Higher Education

* Finally approved

Modifying eligibility for Hazlewood tuition exemption

HB 3766 by Lozano
Died in House Calendars Committee

HB 3766, as passed by the House Committee on Higher Education, would have modified eligibility requirements for the Hazlewood Legacy Program, which, under the Hazlewood Act, allows qualified veterans to pass to their children any unused portion of an exemption from tuition and certain fees at the state's public higher education institutions. Under the bill, to be eligible for the exemption, a child would have had to exhaust all benefits available to them under the Post-9/11 Veterans Educational Assistance Act or any other federal law authorizing benefits for veterans. A child also would have been required to maintain a course load of at least 24 semester credit hours per academic year and a cumulative grade point average (GPA) of at least 2.5 on a four-point scale. A provision that allows institutions to determine the minimum GPA for eligibility would have been removed.

The bill would have required the Texas Veterans Commission to include in its electronic monitoring system of individuals receiving Hazlewood benefits the length of service for the veteran eligible for the exemption as determined by official documentation from the U.S. Department of Defense.

In addition, HB 3766 would have amended Education Code, ch. 54, subch. D to require a person applying for a waiver, benefit, or exemption, including the Hazlewood exemption, at an institution of higher education to complete and submit a free application for federal student aid (FAFSA) or, if the applicant was not eligible to receive federal aid, a Texas application for state financial aid (TASFA) or similar application. This requirement would not have applied to a person receiving a tuition and fee waiver for a dual-credit course.

Supporters said

HB 3766 would retain current Hazlewood benefits, ensuring Texas veterans and their families had access to the educational opportunities they were promised and deserve. The bill would not alter eligibility requirements based on the amount of time served in the military or impose a time limit on the use of benefits. To address concerns about the cost of the Hazlewood Legacy Program, the bill would set academic standards for the children of veterans receiving benefits, including a minimum GPA of 2.5 and minimum course load of 24 semester credit hours per academic year. The bill would establish reasonable requirements while protecting the state's investment in the education of Texas veterans and their children.

In an effort to tap unused funding resources, the bill would require a person applying for the Hazlewood exemption or certain other exemptions or waivers at a higher education institution to apply for federal and state student aid. This requirement could reduce reliance on Hazlewood and other waivers and minimize lost tuition revenue for colleges and universities.

The administration of Hazlewood benefits would remain with the Texas Veterans Commission, which is the most appropriate agency to handle financial aid for veterans.

Opponents said

HB 3766 would not go far enough to help colleges and universities with the growing financial burden of foregone tuition revenue resulting from the Hazlewood exemption. The state reimburses colleges and universities for only a portion of the lost revenue associated with the Hazlewood Legacy Program, forcing institutions to absorb most of the costs or pass them on to other students. The bill should set more stringent eligibility requirements based on the amount of time a veteran served in the military and should limit how long the benefits could be used after a person's discharge.

The bill also should transfer the administration of Hazlewood benefits from the Texas Veterans Commission to the Texas Higher Education Coordinating Board, which is better suited to gather data on students using the exemption and to monitor the program, including its associated costs.

Notes

HB 4089 by Miller, which was left pending after a public hearing in the House Committee on Higher Education, also would have addressed the Hazlewood exemption. Similar to HB 3766, the bill would have included academic criteria for dependents of eligible veterans using the exemption and required children to first exhaust benefits available to them under federal laws authorizing educational benefits for veterans.

HB 4089 also would have changed military service eligibility requirements from 180 days to two years, required that benefits be used within 20 years of a person's discharge from the military, and limited to veterans who had served at least six years the ability to transfer benefits to dependents. The bill also would have specified certain residency requirements and created a joint interim committee to study the Hazlewood exemption.

Reporting, responding to campus sexual assault

SB 966 by Watson - *Effective September 1, 2017;*
SB 968 by Watson/SB 969 by Watson - *Effective June 12, 2017*

SB 968, SB 969, and SB 966 address reporting and responding to sexual assault and related incidents at higher education institutions.

SB 968 requires public and private higher education institutions to allow students and employees to report electronically to the institution allegations of sexual harassment, sexual assault, dating violence, or stalking to which they were a victim or witness, regardless of where the offense occurred. This option must enable students or employees to report the alleged offense anonymously and must meet certain other requirements.

SB 968 also requires private and independent institutions of higher education to have sexual assault policies that meet certain criteria, which was already required of public institutions. Each institution must conduct a public awareness campaign to inform students and employees about the school's sexual assault policy, including its protocol for reporting sexual assault. The bill directs public and private institutions to ensure alleged victims or perpetrators and any others who report incidents of sexual assault are offered counseling from a counselor who does not serve anyone else involved in the incident, to the greatest extent practicable. Institutions also must allow alleged victims or perpetrators to drop a course in which both parties are enrolled without academic penalty.

SB 969 prohibits public and private higher education institutions from taking certain disciplinary action against students who in good faith report that they were victims of or witness to sexual harassment, sexual assault, dating violence, or stalking. The prohibition applies to disciplinary actions for code of conduct violations occurring at or near the time of the incident and applies regardless of where the incident occurred or the outcome of the disciplinary process concerning the incident, if any.

SB 966 establishes that the offenses of consumption or possession of alcohol by a minor do not apply to a minor under certain circumstances involving the reporting of sexual assault. The defense created by the bill may be raised by minors who report that they or another person was sexually assaulted or by minors who were victims of a sexual assault reported by another person. The report of the assault would have to be made to certain health care providers, law enforcement officials, or certain employees of higher education institutions.

Supporters said

SB 968, SB 969, and **SB 966** would help address serious issues with sexual assault and harassment at public and private higher education institutions in the state. The bills would empower victims and witnesses to report incidents more easily and without fear of recrimination. They also would expand requirements for sexual assault policies to cover private institutions to ensure consistency in these protocols across the state. The issue of campus sexual misconduct is widespread and needs to be addressed at all institutions.

Requiring higher education institutions to provide an online reporting option and the ability to report anonymously could encourage more victims to report sexual assault. If an institution investigated an anonymous report of an alleged offense, it still would provide due process to the parties involved and maintain a balance between the privacy of the alleged victim and the rights of the accused party. The need to protect students outweighs the potential costs of a reporting program, which could be covered with existing resources.

The bills would expand options for survivors of sexual assault by requiring that they be offered counseling and allowing them to drop courses in which the alleged perpetrator also is enrolled without academic penalty. The public awareness campaign on an institution's policy would ensure students involved in an incident of sexual assault were informed about their options.

Providing amnesty to students who report sexual assault incidents in good faith would allow victims or witnesses to notify their higher education institutions of such occurrences without fear of being punished for

violations such as underage drinking or illegal drug use. Campuses that have adopted amnesty policies have seen a rise in reporting, which has improved campus safety and the process of investigating alleged offenses. Students who committed a serious offense that required law enforcement involvement would not receive amnesty from the legal repercussions of those actions. The bill also would not provide amnesty from institutional policies to students who committed sexual assault, ensuring the provision would not be abused, nor would amnesty be given for a violation unrelated to the incident.

Allowing minors to raise a defense to an alcohol consumption or possession offense if they report an incident would help change the culture of reporting and investigating sexual assaults, especially on college campuses. This change would provide a much-needed safe harbor to victims of sexual assault who may be afraid of reporting an assault because of the criminal consequences of alcohol use prior to the assault. Individuals who have experienced such trauma should not have to choose between coming forward and risking prosecution for a crime.

Opponents said

The bills would go too far by imposing a mandate on private institutions to adopt sexual assault policies. Instead, the requirements should pertain only to public colleges and universities. By allowing anonymous reporting, the bills would prevent accused parties from being able to face their accusers and respond directly to allegations. While it is important to encourage victims to report incidents, the rights of the accused also must be protected.

It would be inappropriate to provide amnesty to students for breaking school policies, as this could result in students misusing the amnesty provision to get away with serious offenses.

Other opponents said

The bills should allow, rather than require, institutions to provide online reporting of sexual assault. Requiring colleges and universities to provide online reporting could be costly, especially to smaller institutions. Institutions should be allowed, not required, to provide amnesty to those who report sexual incidents so that they could make exceptions to their policies as they deemed appropriate.

Notes

The HRO analyses of SB 968 and SB 969 appeared in the Part One of the May 19 *Daily Floor Report*. The HRO analysis of SB 966 appeared in the May 18 *Daily Floor Report*.

A related bill enacted by the 85th Legislature, **HB 355** by Raney, prohibits certain individuals subject to registration as a sex offender from residing on the campus of a public or private institution of higher education. HB 355 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Other bills related to campus sexual assault were considered but not enacted by the 85th Legislature. **HB 16** by Lozano would have required higher education institutions to adopt a policy on campus sexual harassment, sexual assault, dating violence, and stalking that contained certain elements. It also would have included other requirements for reporting and investigating incidents. The HRO analysis of HB 16, which died in the Senate, appeared in Part Two of the May 1 *Daily Floor Report*.

SB 576 by Huffman would have required certain employees and certain students of higher education institutions who knew about an incident of sexual assault to report it promptly to the Title IX coordinator or be subject to penalties. SB 576 died in the House Committee on Higher Education and was not analyzed in a *Daily Floor Report*.

Increasing oversight over career colleges

SB 1781 by West
Effective September 1, 2017

SB 1781 expands the Texas Higher Education Coordinating Board's regulatory authority over certain private postsecondary institutions, including their financial stability and maintenance of academic records, and provides the board with more enforcement mechanisms to use when institutions violate state laws or rules. The bill also establishes certain requirements for the College Credit for Heroes program.

Financial resources. The bill allows the coordinating board to adopt rules requiring certain private postsecondary institutions to ensure that their financial resources and financial stability are adequate to provide education of a good quality and to fulfill their commitment to enrolled students. The rules must require institutions to maintain reserves, lines of credit, or surety instruments that, when combined with tuition and fee receipts, allow an institution to fulfill its educational obligations to enrolled students if it is unable to continue providing instruction.

Academic records. SB 1781 allows the coordinating board to require certain private postsecondary institutions to maintain academic records of enrolled or former students. Institutions that fail to maintain academic records or to protect students' personally identifiable information must be assessed an administrative penalty between $100 and $500 for each student whose record was not maintained or information was not protected. The coordinating board may maintain a repository of last resort for academic records from certain closed institutions and may discontinue maintaining it if adequate funding is not provided.

College credit for veterans. The coordinating board, under the College Credit for Heroes program, must develop standardized curricula within degree and certificate programs commonly offered by higher education institutions toward which qualified veterans or military service members may earn academic credit for aspects of their military service. The coordinating board must require the transferability of this course credit between institutions of higher education. The board also must consult with the Texas Workforce Commission, the Texas Veterans Commission, and higher education institutions when developing the curricula and transferability requirements.

Supporters said

SB 1781 would give the Texas Higher Education Coordinating Board certain authority over for-profit career colleges that would protect students from becoming victims of a school's sudden closure due to poor management or financial difficulties. The changes would allow the coordinating board to verify institutions' financial viability and create a repository for student records in the event an institution closed. The bill also would clarify the coordinating board's ability to take certain enforcement actions if there was reasonable cause to believe an institution had violated state laws or rules.

In 2016, ITT Technical Institute shut down its campuses nationwide, including 10 branches in Texas, following the federal government's decision to prohibit it from enrolling students receiving federal financial aid. Accreditors had raised questions about ITT Tech's financial stability, management, record keeping, and job placement. When these types of schools close unexpectedly, students often face difficulty obtaining their transcripts and may have to retake courses. While many of these institutions are stable, SB 1781 would provide safeguards for students against those that are not.

The bill also would address confusion about which course credits may be awarded for military service through the College Credit for Heroes program by directing the coordinating board to work with other state entities to develop a uniform standard for the credits a veteran or military service member could receive.

Opponents said

Although SB 1781 is well intentioned, government involvement in private institutions, which is already significant, is one reason higher education is increasingly expensive. Less regulation, not more, would lead to more affordable and higher quality education.

Notes

The HRO analysis of SB 1781 appeared in Part Two of the May 22 *Daily Floor Report*.

The 85th Legislature also enacted a related bill, **HB 2413** by Burkett, which makes it an offense for a person to solicit or disclose or to authorize another person's use of student information that is in the possession of a career school or college or certain other institutions. Previously, the offense applied only to identifying information about a student that was in the possession of the Texas Workforce Commission. The HRO analysis of HB 2413 appeared in Part Two of the April 26 *Daily Floor Report*.

Community college bachelor's degrees

SB 2118 by Seliger
Effective June 12, 2017

SB 2118 allows the Texas Higher Education Coordinating Board to authorize baccalaureate degree programs at public junior colleges that have demonstrated a workforce need and that offer a degree program in applied science, including those with an emphasis in early childhood education, applied technology, or nursing. The coordinating board continues to be required to authorize certain baccalaureate degree programs at junior colleges that previously participated in a pilot program.

Junior colleges are limited to offering three baccalaureate degree programs at any time, except those that had previously participated in a pilot program still may offer up to five. The board must use the same criteria for approving baccalaureate degree programs at general academic teaching institutions and medical and dental units to determine whether a junior college may offer a baccalaureate degree program and what degree programs may be offered.

The coordinating board also must consider the workforce need, whether the junior college's associate degree program in the same field has been successful, and the college's ability to support the program with student enrollment, in addition to other factors currently in statute. A junior college may offer a baccalaureate degree program only if its junior college district had a taxable property valuation amount of at least $6 billion in the preceding year and received a positive assessment of the district's overall financial health. Before it may be authorized to offer a baccalaureate program, the junior college also must submit a report to the coordinating board that includes:

- a long-term financial plan for accreditation from the Commission on Colleges of the Southern Association of Colleges and Schools;
- a long-term plan for faculty recruitment that indicates the ability to pay the increased salaries of doctoral faculty, identifies recruitment strategies for new faculty, and ensures the program would not draw faculty from a neighboring institution offering a similar program;
- details on the manner of program and course delivery; and
- details on existing articulation agreements and dual enrollment agreements.

The information on existing articulation agreements must indicate that at least three articulation agreements have been established with general academic teaching institutions or medical and dental units or the reasons why no articulation agreements have been established. It also must indicate that, with the agreement of the applicable general academic teaching institution or medical and dental unit, established articulation agreements are at capacity. The coordinating board may not authorize a junior college to offer a baccalaureate degree if articulation agreements with general academic teaching institutions or medical and dental units are sufficient to meet the needs in the degree field.

SB 2118 prohibits a public junior college from charging students more for tuition and fees than it charges to a similarly situated student enrolled in an associate degree program in a corresponding field. This does not apply to tuition and fees charged for programs in applied technology or applied science previously offered as part of a pilot project. The bill also provides certain guidelines for appropriating state funds for baccalaureate degree programs at junior colleges.

To determine the authorization of a junior college to offer a baccalaureate degree program in nursing, the coordinating board must:

- require a public junior college to demonstrate that it had secured adequate long-term clinical space;
- obtain a letter from each clinical site provided indicating that it had not refused a similar request from a general academic teaching institution or medical and dental unit; and
- establish that the corresponding associate degree program offered by the public junior college has been successful as indicated by job placement rates and licensing exam scores.

A baccalaureate program in nursing must be a bachelor of science degree program and meet the standards that the Texas Board of Nursing uses to approve pre-licensure degree programs at general academic teaching institutions and medical and dental units, regardless of whether the program is a pre-licensure or post-licensure program. The program must be accredited by a national nursing accrediting body recognized by the U.S. Department of Education.

A junior college offering a baccalaureate degree program in nursing also must demonstrate to the coordinating board that it will maintain or exceed the enrollment available to nursing students enrolled in an associate degree program at the junior college in the 2016-17 academic year and continue to maintain or exceed that level of enrollment in the corresponding associate degree program until the 2021-22 academic year. This requirement expires on January 1, 2023.

SB 2118 also removes the pilot status of a baccalaureate degree program in dental hygiene at Tyler Junior College and extends the program's authorization.

The bill requires each public junior college offering a baccalaureate degree program to report to the coordinating board every biennium on the quality, operation, and effectiveness of the program.

Supporters said

SB 2118 would help address the workforce needs of the state by allowing the Texas Higher Education Coordinating Board to approve degree programs in applied science, applied technology, and nursing at public junior colleges, which could offer affordable programs that met high academic standards. While certain community colleges already have been granted approval to offer baccalaureate degrees, the bill would expand this opportunity to other qualified schools in Texas.

The bill would help address the growing need for early childhood educators in public schools by creating more baccalaureate degree programs in early childhood education. Receiving quality education in early grades is critical for a student's long-term success. For example, a young student's reading proficiency is a strong indicator of success in high school. Allowing for more teachers to be specially prepared in early childhood education could improve the quality of education provided to younger students and subsequently could improve student performance across the state.

SB 2118 also could help address the state's nursing shortage by allowing the coordinating board to approve community college baccalaureate degrees in nursing. In addition, nurses who completed a four-year degree might go on to pursue careers in teaching, which could help alleviate nursing faculty shortages.

The bill would ensure that baccalaureate degrees offered by community colleges were high quality and did not overlap with the offerings of four-year institutions. The quality of education would not be compromised because the coordinating board would follow the same criteria it uses to approve baccalaureate degree programs at general academic teaching institutions. The coordinating board also would be required to consider whether a baccalaureate degree program at a public junior college duplicated the degree programs offered by other institutions of higher education when determining whether to authorize a program. The bill includes specific provisions that would guard against faculty members being drawn away from a neighboring institution.

Each community college district has a board of trustees elected by taxpayers, so communities have the ability to rein in the operations of these institutions if there are concerns about growth leading to higher property taxes.

Opponents said

SB 2118 might lead to duplication of programs the state's universities already offer, and junior colleges might be unable to provide four-year degrees with the same value as those already awarded by universities. Overlap in four-year degree offerings could lead to unproductive competition between junior colleges and universities and might drain students and faculty from existing programs. Allowing community colleges to offer baccalaureate degrees could result in mission creep, further blurring the distinction between these institutions and universities.

Unlike universities, community colleges are funded in part through property taxes. If the Legislature allowed for more community colleges to expand their offerings

to include baccalaureate degrees, the growth could lead to a greater property tax burden for residents of community college districts.

The bill would not alleviate the nursing shortage because there currently is a shortage of nursing faculty. Creating more nursing programs at junior colleges could create competition for nursing faculty among institutions in the state.

Notes

The HRO analysis of SB 2118 appears in Part Two of the May 19 *Daily Floor Report.*

Natural Resources and Environment

* Finally approved

River authority Sunset bills

HB 1920 by Flynn/HB 1921 by Flynn/HB 2180 by Flynn
Effective September 1, 2017

HB 1920 reclassifies the Palo Duro River Authority as a local water district, the Palo Duro Water District. The bill also adopts certain recommendations from the Sunset Advisory Commission and exempts the authority from being subject to limited Sunset review.

District activities. The district may lease the hunting rights on its property; develop, manage, or lease property for any recreational use; or lease property to a person seeking to develop renewable energy sources.

Withdrawal or dissolution of district. A county or municipality in the district may withdraw from the district or the district may be dissolved. The governing body of a member entity must issue an order or pass a resolution declaring the intent to withdraw from or dissolve the district. For a withdrawal, member entities must reach a financial agreement that provides for sufficient revenue to maintain the Palo Duro Reservoir and dam. For dissolution of the district, member entities must provide for the transfer of the dam's ownership rights, the district's assets and liabilities, and the responsibility for the continued provision of services.

The district must hold a public hearing on withdrawal or dissolution and provide an opportunity for the public to comment on the financial agreement.

HB 1921 adopts certain Sunset Advisory Commission recommendations for the Upper Colorado River Authority (UCRA) and requires the authority to undergo Sunset review as if it were a state agency scheduled to be abolished September 1, 2029, and every 12th year thereafter.

Territory. The bill expands the territory of the Upper Colorado River Authority from Coke and Tom Green counties to include Concho, Crockett, Glasscock, Irion, Menard, Mitchell, Nolan, Reagan, Runnels, Schleicher, Sterling, and Taylor counties.

Board of directors. The bill requires each director to be a resident of a county located in the authority's territory, instead of an equal representation of members from Tom Green and Coke counties. In appointing directors, the governor must attempt to achieve geographic representation throughout the authority and designate one member as the presiding officer.

Training and other policies. The bill establishes procedures to train board members on policies and laws applicable to the authority. The board must develop a policy to encourage the use of negotiated rulemaking procedures and appropriate alternative dispute resolution procedures that, to the extent possible, conform to State Office of Administrative Hearings guidelines.

The board also must develop and implement policies clearly separating the policymaking responsibilities of the board and the management responsibilities of the general manager and staff.

Complaints and legal notice. The UCRA must maintain a system to promptly and efficiently act on filed complaints. It also must maintain certain information relating to the complaints and make information available describing procedures for complaint investigation and resolution. The authority must periodically notify the complaint parties of the status of the complaint until final disposition.

HB 2180 adopts certain Sunset Advisory Commission recommendations for the Sulphur River Basin Authority (SRBA) and requires the SRBA to undergo Sunset review as if it were a state agency scheduled to be abolished September 1, 2029, and every 12th year thereafter.

Authority. The bill removes authorization for the SRBA to aid in the foresting of the watershed area, furnish solid waste collection, acquire land for park and recreational purposes, or develop hydroelectric power.

Permits for proposed projects. SRBA's board must obtain advice on a proposed project from each county judge in the proposed area before voting on a project for which a permit will be sought.

Board of directors. The bill ends the terms of the current members of the SRBA's board of directors September 1, 2017, and requires the governor to make

new appointments or reappoint current members by September 2. Members whose terms expired can vote, deliberate, and be counted as a director until December 1, 2017. The governor also must designate a presiding officer of the board, and the position of board president is eliminated.

Training and other policies. The bill establishes procedures to train board members on policies and laws applicable to the authority. The board must develop a policy to encourage the use of negotiated rulemaking procedures and appropriate alternative dispute resolution procedures that, to the extent possible, conform to State Office of Administrative Hearings guidelines.

The board must develop and implement policies clearly separating the policymaking responsibilities of the board and the management responsibilities of the executive director and staff.

Complaints and legal notice. The SRBA must to maintain a system to promptly and efficiently act on filed complaints. It also must maintain certain information relating to the complaints and make information available describing procedures for complaint investigation and resolution. The authority must periodically notify the complainants of the status of the complaint until final disposition.

Supporters said

HB 1920 would more accurately classify the Palo Duro River Authority as a local water district because the authority does not manage a river, and its board, funding, and jurisdiction structurally resemble a water district more than a river authority.

The bill also would allow the district to engage in revenue-generating activities, such as leasing property for certain purposes, which would reduce reliance on property tax revenue.

HB 1921 would update the boundaries of the Upper Colorado River Authority (UCRA) to better reflect its service area and regional footprint by expanding the authority to 12 additional counties. While some are concerned about the cost associated with the Sunset review, it only happens once every 12 years and should be feasible with proper management.

HB 2180 would make important changes to the Sulphur River Basin Authority, which has been involved in regional controversies over a proposed reservoir project. The authority also has provided limited oversight and accountability measures and insufficient transparency. The bill would provide for proper training for board members and the development of certain policies that would increase the authority's efficiency, including separating the duties of the executive director from the board. Further, the bill appropriately would grant to the governor authority to appoint members to the board at the governor's discretion.

Under the bill, the SRBA would have to maintain a system on the status of complaints against the authority, making the complaint process more open. The board also would have to reach out to local entities when seeking a permit for a proposed project, which would further increase transparency and cooperation in the region.

Opponents said

HB 1920 would remove language in current law stating that the Palo Duro River Authority was not authorized to develop or acquire groundwater, which unnecessarily would enable the district to take water from certain member counties. This could damage the property rights of these citizens.

Although **HB 1921** would update the boundaries of the UCRA to more accurately reflect its service area, it does not take into account that not all of Crockett and Taylor counties lie within the Upper Colorado River watershed. The authority should be required to ensure that board members selected from Crockett and Taylor counties resided within that watershed.

The Sunset review audit cost the UCRA a significant portion of its fiscal 2016 budget. With several other audits required by law of river authorities, the Sunset provision compounds the cost of reporting for river authorities

HB 2180 would not require the Sulphur River Basin Authority to immediately replace the current board of directors, which was an important Sunset recommendation. Instead of authorizing the governor to reappoint any member whose term expired under the bill on September 1, the authority should have a board of directors with all new membership going forward.

Notes

The HRO analyses of HB 1920 and HB 2180 appeared in Part One of the May 1 *Daily Floor Report*. HB 1921 was not analyzed in a *Daily Floor Report*.

Studying aquifer storage and recovery projects

HB 2005 by Larson
Died in the Senate

HB 2005, would have required the Texas Water Development Board (TWDB) to work with appropriate interested persons, including groundwater conservation districts, regional water planning groups, and potential sponsors, to study aquifer storage and recovery (ASR) projects identified in the state water plan or by interested persons and to report the results.

TWDB also would have been required to conduct a statewide survey of the most favorable areas for ASR, prepare a report with an overview of the survey, and submit the report to the governor, lieutenant governor, and speaker of the House by December 15, 2018.

Supporters said

HB 2005 would encourage the development of ASR projects in the state by requiring the Texas Water Development Board (TWDB) to further study potential aquifers. Declining groundwater levels and intermittent river flows currently are curtailing water storage efforts. The state water plan, which is designed to meet water needs during times of extreme drought, projects a need for almost 9 million acre-feet of water by 2070, requiring new, more effective water storage methods such as ASR.

ASR projects have been used successfully in other states for years to store water underground, preventing surface evaporation and mitigating flooding and the sinking of land, or "subsidence." These projects also keep surface lands from being taken out of operation by above-ground storage, freeing the property for other uses.

In 2015, the 84th Legislature enacted HB 655 by Larson, which provided a regulatory framework for ASR projects. HB 2005 would expand on studies required by HB 655 and direct TWDB to perform an expansive statewide study of potential aquifers and an in-depth study of areas favorable for ASR, providing more information to local governments and all interested parties about which geological formations along river basins are conducive to the use of this water storage technique. The information could encourage small communities with few resources to invest in promising ASR projects already studied by TWDB. Without this information, entities can be reluctant to initiate such projects.

Opponents said

HB 2005 would cost the state about $850,000 in general revenue related funds in fiscal 2018 and about $300,000 each year after to conduct more studies without taking any substantial action to create new ASR projects.

Notes

The HRO analysis of HB 2005 appeared in the April 11 *Daily Floor Report*.

HB 3987 by Larson, effective September 1, 2017, also relates to ASR projects. The bill creates the state participation account II, which TWDB may use to provide financial assistance to develop ASR and certain other facilities. The HRO analysis of HB 3987 appeared in Part Two of the May 1 *Daily Floor Report*.

HB 3991 by Larson, which died in the Senate, would have amended water rights for ASR projects. It would have allowed a project to use water derived from multiple sources, including a new appropriation of water. It also would have allowed a water right holder for a reservoir project to apply to amend that right for use in an ASR project. The Texas Commission on Environmental Quality would have been authorized to create an expedited procedure for water right applications. The HRO analysis of HB 3991 appeared in Part Two of the May 8 *Daily Floor Report*.

Revising LIRAP and local initiative project requirements

HB 2321 by Turner
Died in the Senate

HB 2321, as approved by Senate committee, would have made various changes to the Low-Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) and the local initiative projects program. Through LIRAP, eligible car owners may receive funding to help with emissions-related repairs or vehicle replacement, while the local initiative projects program funds certain air-quality projects in counties that participate in LIRAP.

The bill would have made revisions to the guidelines used by the Texas Commission on Environmental Quality (TCEQ) for counties participating in LIRAP, including setting a maximum financial assistance amount of at least $800 for vehicle repairs. The minimum amount of financial assistance available for vehicle replacements would have increased to:

- $4,000, from $3,000, for a replacement car of the current model year or previous four, rather than three, model years;
- $4,000, from $3,000, for a replacement truck of the current model year or previous three, rather than two, model years; or
- $4,500, from $3,500, for a replacement vehicle of the current model year or previous four, rather than three, model years if that vehicle was a hybrid, electric, or natural gas vehicle or was certified to meet certain federal emissions standards.

Generally, the bill would have required replacement vehicles to have an odometer reading of 85,000 miles or less, which is an increase from 70,000 miles or less, and to be in a class or category of vehicles that was certified to meet certain federal emissions standards, among other requirements in current law.

Counties pursuing local initiative projects would have been required to spend on LIRAP at least half of the funding from inspection fees made available to the county, and any funds for local initiative projects that had not been spent on the last day of the fiscal year for which the money was allocated could have been spent on local government fleet replacement and retirement.

HB 2321 would have removed the requirement that no more than $7 million per fiscal year be allocated for local initiative projects and that $2 million of the potential $7 million be used for projects addressing counterfeit registration insignia. The bill also would have eliminated the requirement that money for local initiative projects be provided to counties only on a matching basis.

Supporters said

HB 2321 would modernize and increase the effectiveness of LIRAP and local initiative projects, which have been instrumental in reducing emissions across the state. Multiple Texas counties are in nonattainment of the eight-hour ozone standard set by the Environmental Protection Agency (EPA), and these programs are critical for reaching attainment, especially as the EPA prepares to implement a more stringent ozone standard.

Expanding model year eligibility and allowable mileage in LIRAP would help lower-income participants who might not be able to use the program due to the costs of payments on a newer vehicle. Eliminating the burdensome funds matching requirement for local initiative projects funding, which essentially double-charges counties for use of funds collected within the county, would allow counties more flexibility in implementing projects.

Opponents said

HB 2321 would expand the scope of government by increasing existing subsidy programs that take money from motorists' vehicle inspections and redistribute it to others. Such programs interfere with the free market.

Notes

The HRO analysis of HB 2321 appeared in Part One of the April 27 *Daily Floor Report*.

The 85th Legislature considered a related bill, **HB 402** by Huberty, which died in Senate committee. The House-passed version would have required that 90 percent of funding collected from emissions inspection fees in Harris County be distributed back to that county and would have modified LIRAP and local initiative project requirements for counties of at least 420,000. The HRO analysis of HB 402 appeared in the April 4 *Daily Floor Report*.

The governor vetoed appropriations of about $87 million for LIRAP and about $10 million for local initiative projects that had been included in SB 1 by Nelson, the fiscal 2018-19 general appropriations act.

Brackish groundwater operating permit process

HB 2377 by Larson
Vetoed by the governor

HB 2377 would have established a process for groundwater conservation districts to issue well operating permits with a minimum 30-year term to produce brackish groundwater for projects to generate electricity or provide a public source of drinking water. A permit would have had to allow a rate of withdrawal of brackish groundwater not to exceed, and consistent with, the amount a designated zone was capable of producing. A district would have been required, to the extent possible, to issue permits up to the point that the total volume of groundwater produced in a zone equaled the amount of brackish groundwater that could be produced annually to achieve groundwater availability as described by the Texas Water Development Board (TWDB).

District rules. A district located over any part of a designated brackish groundwater production zone could have adopted rules to govern the issuance of permits. The rules could not have impaired property rights of a landowner to drill or produce the groundwater below the surface of the landowner's land.

Monitoring system. A district would have been required to implement a system recommended by the TWDB to monitor water levels and quality in the same or an adjacent aquifer in which the designated production zone was located. For projects located in the Gulf Coast Aquifer, as defined in the bill, a district also would have had to determine if production was causing or would be likely to cause subsidence.

Annual reports. A permit holder would have been required to submit annual reports on the amount of brackish groundwater withdrawn, the average monthly water quality, and the levels of the aquifer in the production zone. A district could have amended the applicable permit to limit water production, approve a mitigation plan, or both, if brackish groundwater production was projected to cause significant water level declines, negative effects on water quality, or subsidence.

Supporters said

HB 2377 would establish a permitting process for alternative water supplies through the production of brackish groundwater, which is an important step toward ensuring science-based groundwater management for the state's future water supply. In 2015, the 84th Legislature enacted HB 30 by Larson, which directed the Texas Water Development Board (TWDB) to identify and designate brackish groundwater production zones. While the TWDB can designate these zones, it does not have the ability to permit brackish groundwater production. This bill simply would continue efforts to diversify the state's water resources, including by relieving pressure on freshwater supplies by developing drought-resistant brackish groundwater resources.

Districts could enforce any rules required under the bill, including the required monitoring system. They could create any enforcement tool deemed necessary for a local violation of rules. Under the bill, a district could amend a permit or establish a mitigation plan if there was some unanticipated negative effect on water levels. In such cases, a district would have the option to reference a mitigation plan in the permit itself to ensure implementation.

Concerns that the bill would leave districts open to litigation by groundwater developers are unfounded because the bill only references current law with regard to property rights and would not create a new standard. This provision would ensure that brackish groundwater permits had standards that were similar to fresh groundwater permits.

Opponents said

Creating a separate bureaucratic process for brackish groundwater permits is unnecessary and an inappropriate expansion of government. Because TWDB already has significant authority in this area, the Legislature instead should propose a less bureaucratic way to provide greater access to brackish groundwater.

Other opponents said

The brackish groundwater operating permit process proposed by HB 2377 could be improved by properly enforcing monitoring requirements. The bill would not impose consequences if monitoring of a designated brackish groundwater production zone found subsequent permit violations or other negative impacts. Districts should be able to hold permit holders liable for damages by revoking or otherwise limiting a permit. The bill also does not fully explain how a district's plan to mitigate negative effects of groundwater production would gain approval or how the plan would be tracked to ensure enforcement.

The bill also should not include a specific provision prohibiting permits from infringing on property rights. These rights already are covered in statute, and this provision could leave districts open to litigation by groundwater developers.

Notes

HB 2377 was not analyzed in a *Daily Floor Report*. A similar bill, **HB 27** by Larson, died in the Senate during the first called session of the 85th Legislature. The HRO analysis of HB 27 appeared in the August 3 *Daily Floor Report*.

Continuing Board of Veterinary Medical Examiners

SB 319 by Watson
Effective September 1, 2017

SB 319 continues the State Board of Veterinary Medical Examiners until September 1, 2021, and makes several changes related to board membership, licensing terms, the complaint process, and prescription monitoring.

Board structure and training. The bill revises the composition of the nine-member board to include five veterinarians and one veterinary technician, rather than six veterinarians, with three members continuing to represent the public. Of the veterinarian members, one must be associated with an animal shelter and one must have at least three years of experience practicing veterinary medicine in Texas on large animals. These changes will be implemented as the terms of current board members expire.

SB 319 expands the current board member training program, and the executive director of the board is charged with creating a training manual to be distributed annually to each board member. Current board members must complete any additional training by December 1, 2017, in order to participate in board activities on or after that date.

License terms and renewal. Each type of license issued by the board is valid for one or two years, and the board must prorate license fees on a monthly basis for a year in which the license expiration date is changed. The board may not limit the time a license holder remains on inactive status.

The board must conduct criminal history record information checks on each license applicant. New and renewal applicants must submit a complete and legible set of fingerprints to the board or to the Department of Public Safety for the purpose of obtaining criminal history record information, unless the applicant already has done so. If a new applicant does not comply, the board may not issue an initial license. If a renewal applicant does not comply, the board may administratively suspend or refuse to renew a license.

Complaints and sanctions. The board may not accept anonymous complaints, and any complaint requiring medical expertise must be reviewed by one or more veterinarians designated by the board, instead of two or more veterinarian board members. Complaint reviewers determine whether to dismiss the complaint or refer it to an informal proceeding. If the reviewers determine that dismissal is appropriate, it must be approved by the board at a public meeting. If the reviewers do not agree, the complaint will be referred to an informal proceeding. A board member who reviews a complaint may not participate in any subsequent disciplinary proceedings related to the same complaint.

Each complaint and all other investigative information in the board's possession relating to a license holder, an application for a license, or a criminal investigation or proceeding is privileged and confidential and not subject to legal compulsion for release to anyone other than the board or its agents involved in the discipline of a license holder. The board also must protect the identity of the complainant to the extent possible.

The board must provide a license holder who is the subject of a formal complaint access to all information it intends to offer as evidence at a contested hearing within 30 days of receiving a written request for it. The board must promptly notify a complainant of the final disposition of the complaint, including any public sanctions imposed, and an explanation of each reason that the conduct alleged in the complaint did or did not constitute grounds for the imposition of a penalty, disciplinary action, or other sanction.

The bill requires the board to adopt a schedule of penalties, disciplinary actions, and other sanctions and ensure that the severity of a sanction is appropriate for the type of violation or conduct being disciplined. The disciplinary action and penalty will be based on the seriousness of the violation, the history of previous violations, efforts to correct, and any other matter justice may require.

Prescription monitoring. The board, in coordination with the Texas State Board of Pharmacy, is charged with determining conduct that constitutes potentially harmful prescribing or dispensing patterns or practices and periodically must check prescribing

and dispensing records to determine if a veterinarian is engaging in these patterns or practices. If the board suspects harmful behavior, it may notify or initiate a complaint against the veterinarian.

The board also may conduct risk-based inspections of a veterinarian's practice based on information it obtains on the veterinarian's use, handling, prescribing, dispensing, or delivery of controlled substances.

Other provisions. The bill also requires veterinarians or the local rabies control authority, as applicable, to provide to the owner of an animal quarantined for rabies exposure or infection written notification of the date the animal enters quarantine and the date it will be released. Each animal quarantined must be identified with a placard or other marking on its kennel. A veterinarian or local rabies control authority may not destroy an animal after the quarantine period has ended unless the veterinarian or authority has notified the owner, if available, of the animal's scheduled destruction.

SB 319 exempts from veterinarian regulations a licensed health care professional who, without expectation of compensation and under the direct supervision of a veterinarian on staff, provides treatment or care to an animal owned by or in the possession, control, or custody of an entity accredited by the Association of Zoos and Aquariums or by the Global Federation of Animal Sanctuaries or the Zoological Association of America.

Supporters said

SB 319 would provide for a short, four-year continuation of the State Board of Veterinary Medical Examiners, which would ensure that current struggles with administrative functions and inconsistencies in the agency's enforcement process were addressed quickly.

Requiring the agency to develop and adopt a schedule of sanctions and to establish clearly defined enforcement procedures would address several concerns discovered during Sunset review. The board devotes most of its budget and almost half of its staff to its enforcement functions, and investigators have broad flexibility when conducting inspections. This results in variable treatment of licensees and complaints, which can be exacerbated by poor communication between the agency and the parties involved. Clearly defining enforcement procedures and ensuring that disciplinary actions relate appropriately to the nature and seriousness of any offense committed would be a significant improvement to the current enforcement process.

Ensuring the confidentiality of complaint investigations is in line with Sunset recommendations and would protect both the complainant and the licensee from unnecessary public harm.

Establishing a method of monitoring Texas veterinarians who dispense controlled substances is important because Texas veterinarians are at a high risk for diversion of these substances, including opioids, which have potential for abuse among humans.

Changing the composition of the board would ensure that the board members adequately reflected the diverse group of licensees the board regulates. Requiring the agency to develop a training manual would ensure that board members knew the rules and regulations under which they operate while providing clarity on the scope and limitations of the board's rulemaking authority.

Allowing the license renewal term to be extended to every two years would ease the administrative burden on the agency without compromising oversight of the licensees and would allow staff to dedicate more time to other licensing functions. The bill appropriately would require fingerprint-based criminal history record checks, which has been identified as a best practice and is common for occupational licensing agencies.

Opponents said

SB 319 could do more to protect the public. Making all information relating to a license holder privileged and confidential, not even subject to legal discovery, would be inconsistent with the theme of transparency that prevailed during Sunset review. The public has a right to know about these investigation procedures.

Adding new, onerous requirements in the form of mandatory fingerprinting and background checks is unnecessary for this type of agency and would infringe upon the rights of license holders.

More improvements could be made to the composition of the board. Currently, public citizens who provide health care services, or whose spouses

provide veterinary health care services, are ineligible for board membership, even though these citizens may be among the most qualified for the position. In addition, reducing the number of veterinarians on the board could overburden the remaining veterinarians.

Notes

The HRO analysis of SB 319 appeared in Part One of the May 16 *Daily Floor Report*.

Preempting local seed regulations

SB 1172 by Perry
Effective September 1, 2017

SB 1172 prohibits a political subdivision from adopting an order, ordinance, or other measure that regulates agricultural seed, vegetable seed, weed seed, or any other seed in any way, including planting seed or cultivating plants grown from seed. An order, ordinance, or other measure that violates this prohibition is void, whether it was adopted before, on, or after September 1, 2017.

A political subdivision may adopt a measure otherwise prohibited by the bill to:

- comply with federal or state requirements;
- avoid a federal or state penalty or fine;
- attain or maintain compliance with federal or state environmental standards, including water quality standards; or
- implement a water conservation plan, drought contingency plan, or voluntary program as part of a conservation water management strategy included in the applicable regional water plan or state water plan.

The bill does not preempt or otherwise limit a county or municipality's authority to adopt and enforce zoning regulations, nuisance regulations, or waste disposal restrictions.

Supporters said

SB 1172 would ensure uniformity in the application of seed regulations across Texas. Political subdivisions in other states have begun passing ordinances banning the use of certain seeds. These ordinances run contrary to free market principles and create costly burdens for farmers, especially those who may have fields located in more than one county. Market participants would be better served by having one uniform seed law covering the entire state.

Opponents said

SB 1172 would negatively affect a county's ability to create rules specific to its location. Several situations could motivate a county to create reasonable ordinances regulating seeds, including restricting the timing of planting and creating buffer zones to prevent contamination. Local governments in other states have restricted the growth of genetically engineered (GE) crops to help protect non-GE crops in the area from contamination that can interfere with their designation as organic and from herbicide and pesticide drift. Some localities also might have an interest in regulating neonicotinoids, a type of insecticide that has been linked to declines in pollinator populations. Conditions vary across different areas of the state, and local governments should have the flexibility to respond to their unique needs.

The word "cultivating" in the bill could be interpreted broadly and lead to unintended consequences. It should be defined clearly or removed.

Notes

The HRO analysis of SB 1172 appeared in Part One of the May 21 *Daily Floor Report*.

Continuing, modifying TERP

SB 1731 by Birdwell
Effective September 1, 2017

SB 1731 continues the Texas Emissions Reduction Plan (TERP) until the end of the biennium in which the state attains compliance with the federal ambient air quality standards for ground-level ozone and makes various changes to TERP programs and their funding. The bill also abolishes numerous councils and advisory boards, including the TERP advisory board.

Program changes. SB 1731 establishes new programs under TERP and revises eligibility requirements and other provisions governing existing programs.

Governmental alternative fuel fleet grant program. The bill requires the Texas Commission on Environmental Quality (TCEQ) to create the governmental alternative fuel fleet grant program to help eligible applicants buy or lease new motor vehicles that operate primarily on an alternative fuel, including natural gas, liquefied natural or petroleum gas, hydrogen fuel cells, or electricity. The grants also may be used to buy, lease, or install refueling infrastructure or equipment or to procure refueling services to store and dispense alternative fuel. State agencies and political subdivisions that operate fleets larger than 15 vehicles and public entities that provide public or school transportation services may apply for grants under the program.

Light-duty motor vehicle purchase or lease incentive program. The bill also requires TCEQ to re-establish the light-duty motor vehicle purchase or lease incentive program, which expired in August 2015. Under the program, eligible applicants may receive incentives to buy or lease new light-duty motor vehicles powered by compressed natural gas, liquefied petroleum gas, or hydrogen fuel cell or other electric drives if they agree to register and operate the vehicle in Texas for a minimum period prescribed by the commission.

Alternative fueling facilities program. SB 1731 modifies the alternative fueling facilities program to include components of the clean transportation triangle program, which the bill repeals. The alternative fueling facilities program must offer grants for fueling facilities for certain alternative fuels in the "clean transportation zone," rather than in nonattainment areas. The bill defines "clean transportation zone" to mean:

- counties containing, intersected by a portion of, or located within an area bounded by an interstate highway connecting Houston, San Antonio, Dallas, and Fort Worth;
- counties containing, intersected by a portion of, or located within an area bounded by an interstate highway connecting San Antonio to Corpus Christi or Laredo, the most direct route using highways in the state highway system connecting Corpus Christi and Laredo, or a highway connecting Corpus Christi and Houston;
- counties located wholly or partly included in a nonattainment area; and
- counties designated as affected counties under current law.

Seaport and rail yard emissions reduction program. The bill changes the name of the drayage truck incentive program to the seaport and rail yard emissions reduction program and makes cargo handling equipment, in addition to drayage trucks, eligible for the program's incentives.

Other programs. SB 1731 also modifies the clean school bus program, the new technology implementation grant program, the clean fleet program, the natural gas vehicle grant program, and the diesel emissions reduction incentive program. For example, the bill allows TCEQ to streamline the application process for the diesel emissions reduction incentive program by developing a system to accept applications electronically through the agency's website.

Funding changes. SB 1731 adds to the list of items for which TCEQ and the comptroller must provide grants or other funding under TERP. Funding must be provided for research and other activities associated with making any necessary demonstrations to the U.S. Environmental Protection Agency (EPA) to account for the impact of foreign emissions or an exceptional event

and for studies of or pilot programs for incentives for port authorities in nonattainment areas or certain other counties.

The bill also amends how money in the TERP fund must initially be allocated, including by establishing that:

- 10 percent, instead of at least 16 percent, of the fund may be used for the natural gas vehicle grant program;
- up to $6 million may be used for the alternative fueling facilities program;
- not more than $750,000 may be used annually for research related to air quality;
- between $6 million and $8 million is allocated to TCEQ for administrative costs;
- 6 percent may be used for the seaport and rail yard areas emissions reduction program;
- up to $500,000 may be used for studies of or pilot programs for emissions reduction incentives for port authorities in nonattainment areas or certain other counties; and
- up to $2.5 million may be used for research and other activities related to making necessary demonstrations to the EPA to account for the impact of foreign emissions or an exceptional event.

Money allocated from the TERP fund to a particular program could be used for another program under the plan, as determined by TCEQ, based on demand for grants for eligible projects.

Supporters said

SB 1731 would continue and expand the Texas Emissions Reduction Plan (TERP), a voluntary approach to reducing emissions and achieving compliance with federal air quality rules. TERP has produced meaningful air quality and economic benefits through a variety of grant programs that target mobile sources of emissions, and it is important to extend these programs to help Texas comply with ground-level ozone standards.

The bill would make improvements to TERP's slate of programs. It would create the governmental alternative fuel fleet grant program to fund an existing requirement that at least half of each government fleet of more than 15 vehicles, except law enforcement and emergency vehicles, use compressed natural gas, liquefied natural gas, liquefied petroleum gas, electricity, or certain other fuel types. The bill also would renew the light duty motor vehicle purchase or lease incentive program, allowing vehicle owners across Texas to benefit from the environmental and economic advantages of alternative fuel vehicles. Combining the clean transportation triangle program and the alternative fueling facilities program, which fund similar projects, would make program administration more efficient and reduce confusion for applicants.

SB 1731 would revise the funding structure of TERP programs to allot more initially to the programs that result in the most cost-effective emissions reductions. For example, the bill would allow more money to go toward updating rail yard and seaport equipment, a significant source of pollution. The Texas Commission on Environmental Quality (TCEQ) also would have the flexibility to use money allocated to a particular program for another program based on demand.

The bill also would remove numerous boards and commissions that the Office of the Governor has determined are no longer active.

Opponents said

While it is positive that SB 1731 would extend and expand TERP, the Legislature still should take steps to ensure the program is adequately funded. The bill would fall short by not extending the fees that pay for the program beyond 2019. In addition, TERP is consistently underfunded, bringing in more revenue than it is appropriated, and appropriations for the program for fiscal 2018-19 are notably less than those in 2016-17. All of the revenue collected for TERP should be appropriated to TCEQ to be used for its intended purpose and the balance in the TERP account spent down. Continuing the fees that support TERP and spending the revenue they generate on the program are important in ensuring Texans can breathe clean air.

Other opponents said

TERP amounts to a government subsidy with questionable benefits and should be eliminated, not continued. It distorts the alternative energy market using taxpayer money. While complying with federal

environmental regulations may be necessary, it would be better to do so without grants that unfairly benefit certain industries over others.

Notes

SB 1731 was amended in conference committee to include the provisions continuing TERP until the state achieves federal air quality standards and changing TERP programs. These provisions are similar to those contained in **SB 26** by Estes, which was placed on the House's May 23 General State Calendar but not considered. The HRO analysis of SB 26 appeared in Part Five of the May 23 *Daily Floor Report*.

Public Education

* Finally approved

School finance commission and other modifications

HB 21 by Huberty, First Called Session
Generally effective November 1, 2017

HB 21 creates a commission to make recommendations for revising the state's school finance system. It also creates a new program to assist charter schools with facilities funding and increases funding for an existing program that helps school districts retire debt for instructional facilities. The bill institutes several new grant programs and phases out a funding differential for small school districts based on their geographic size.

School finance commission. The bill creates the Texas Commission on Public School Finance to study and make recommendations for improvements to the school finance system or for new methods of financing public schools. The commission is composed of 13 members, with four members each appointed by the governor, lieutenant governor, and House speaker, plus one member of the State Board of Education designated by the board chair. The governor designates the presiding officer of the commission.

The commission's recommendations must address certain issues, including the relationship between state and local funding in the school finance system, the appropriate levels of local tax effort necessary to implement a funding system that complies with the requirements of the Texas Constitution, and policy changes to the system necessary to adjust for student demographics and the state's geographic diversity. The commission's report to the governor and Legislature is due by December 31, 2018.

Facilities funding. Beginning in fiscal 2019, HB 21 provides state facilities funding for charter schools with acceptable academic performance ratings. Funding is capped at $60 million for the fiscal year and may be used only for certain expenses related to the purchase, lease, acquisition, sale, or maintenance of an instructional facility. Beginning in fiscal 2019, the bill increases the guaranteed yield for the Existing Debt Allotment (EDA) program, which provides school districts with tax rate equalization for local debt service taxes. The guaranteed yield increases from $35 to $40 per student in average daily attendance per penny of tax effort. The EDA funding increase is capped at $60 million for the fiscal year.

Programs for students with autism, dyslexia. HB 21 creates a pair of two-year grant programs for districts and charter schools that provide innovative programs for students with autism and students with dyslexia. For each program the commissioner of education is required to set aside up to $20 million in funds from fiscal 2018-19 appropriations and to award grants to not more than 10 programs that meet eligibility requirements. The grant programs expire September 1, 2021.

Financial hardship grants. The bill creates a two-year grant program to defray financial hardships resulting from changes to school funding laws. Districts and charter schools must apply for the funding, which will be distributed according to a formula in the bill. Total grants cannot exceed $100 million for the 2017-18 school year or $50 million for the 2018-19 school year. The grant program expires on September 1, 2019.

Small district adjustment. Beginning September 1, 2018, the bill annually increases the small district adjustment applied to the basic allotment for districts that have 1,600 or fewer students and contain less than 300 square miles. Effective September 1, 2023, all small districts will receive the same adjustment regardless of their geographic size.

Fund transfers. To fund some of the programs in HB 21 and additional spending on the state's health program for retired teachers, HB 21 transfers $311 million of the unencumbered general revenue appropriations made during the regular session in SB 1 by Nelson from the Health and Human Services Commission to the Texas Education Agency and $212 million to the Teacher Retirement System of Texas.

Supporters said

School finance commission. HB 21 would begin the process of overhauling an outdated school finance system that the Texas Supreme Court in 2016 said was in need of "transformational, top-to-bottom reforms." The commission could start with a clean slate and design a system that considers appropriate funding

levels to meet the varying characteristics of Texas students and school districts.

Rather than addressing a few aspects of the system with temporary fixes, the commission could take a holistic look at how much money is needed, how to finance the system, and how to spend the revenue to meet requirements of the Texas Constitution and ensure a more sustainable school funding model. While some have called for an immediate infusion of money to address certain aspects of the current system, simply spending more money does not guarantee better schools.

Facilities funding. The bill would shrink the funding gap between charter schools and traditional school districts by providing eligible charter schools with facilities funding for the first time. This funding would help improve and expand charter school facilities to meet the demand of Texas families waiting for a spot in a charter school. In addition, the bill would benefit traditional public schools by increasing funding for a program that helps districts pay off their bond debt.

Hardship grants. The $150 million hardship grant program would offset a portion of funding reductions that some districts could experience from the September 1, 2017, expiration of a 2006 hold harmless provision known as Additional State Aid for Tax Reduction (ASATR). Temporarily compensating those districts that will lose money would be appropriate even though many are considered property wealthy.

Small district adjustment. HB 21 would correct a feature of the school finance formulas that penalizes small school districts of fewer than 300 square miles. This feature has long resulted in unequal funding for similarly situated districts and the bill would phase out the funding differential.

Opponents said

School finance commission. HB 21 would create yet another study of a school finance system, the deficiencies of which are widely known and could be addressed immediately. Boosting state funding would help improve student learning and provide relief to local taxpayers who have been paying an increasing share of the cost for public schools in recent years.

The commission's effort could end up like many past legislative studies on school finance and other education issues, which have produced recommendations that were not implemented by the Legislature. It also is unclear whether the commission would be sufficiently independent to adopt solutions that might be controversial among some constituencies.

Facilities funding. Charter schools should not receive facilities funding at a time when the Legislature has done little to help fast-growth traditional public schools that are struggling to build schools for their influx of students. Charter schools were established two decades ago with less funding in exchange for being exempted from some of the costly regulations that apply to traditional public schools.

Hardship grants. The hardship grant program would carry forward funding inequities that largely benefit the wealthiest school districts. Awards under the bill's $150 million hardship grant program primarily would go to school districts in the two highest quintiles of wealth per student, according to an analysis by the Legislative Budget Board.

Notes

HB 30 by Zerwas, enacted during the special session, contains additional provisions related to the transfer of funds from HHSC to agencies of public education as authorized by HB 21. The HRO analyses of HB 21 and HB 30 appeared in the August 4 *Daily Floor Report*.

Revising public school accountability

HB 22 by Huberty
Effective June 15, 2017

HB 22 revises the public school accountability system to restructure the domains of performance on which districts and campuses are evaluated. It delays the implementation of A-F letter ratings for campuses until the 2018-19 school year. The bill also aligns the revised grading system with Texas' sanction and intervention strategies for low-performing schools.

Domains. The bill reduces from five to three the number of domains for evaluating district and campus performance and establishes indicators to be used in each category.

The *student achievement domain* includes scores on state standardized tests and, for high schools, incorporates graduation rates, students who enlist in the armed forces, and students who earn college credit or satisfy certain college readiness benchmarks, among other factors.

Indicators for the *school progress* domain include the percentage of students who met the standard for improvement as determined by the commissioner. The standard must allow for appropriately crediting a student for growth if the student performs at the highest achievement standard in the previous and current school year. For evaluating relative performance, districts and campuses will be compared to similar districts or campuses.

The *closing the gaps* domain is calculated using disaggregated data to demonstrate differentials among students from different racial and ethnic groups, socioeconomic backgrounds, and other characteristics, including students formerly receiving special education services, students continuously enrolled, and students who are mobile.

Letter ratings. Beginning with the 2017-18 school year, districts will receive A-F letter ratings for each domain and overall performance. For that year, campuses will be rated as met standard or improvement required. Beginning with the 2018-19 school year, campuses will receive letter grades for each domain and overall performance. A rating of D reflects performance that needs improvement and an overall or domain performance rating of F reflects unacceptable performance.

To assign an overall rating for a district or campus, the commissioner must consider either the district's or campus's rating under the student achievement domain or the school progress domain, whichever is higher. However, if the district or campus received an F in either domain, the district or campus may not be assigned a performance rating higher than a B. The commissioner also must attribute not less than 30 percent of the performance rating to the closing the gaps domain. The commissioner also must ensure that the rating system allows for the mathematical possibility that all districts and campuses could receive an A rating.

Each school year, the commissioner must provide each district a document that explains the accountability performance measures, methods, and procedures that will be applied for that school year.

Local accountability system. The bill allows districts and charter schools to develop plans to locally evaluate their campuses. Once a plan receives approval from the Texas Education Agency (TEA), districts and charter schools may use locally developed domains and indicators together with the three state-mandated domains to assign overall A-F ratings for each campus. Among other minimum requirements for the local accountability system, the three state-mandated domains must account for at least 50 percent of the overall performance rating. Ratings from an approved local accountability system cannot be used if TEA has assigned a campus an overall performance rating of D or F.

Targeted improvement plans. If a school district or campus is assigned an overall or domain performance rating of D, the commissioner of education must order it to develop and implement a targeted improvement plan approved by the district's board of trustees. If a D rating persists after a targeted improvement plan is developed and implemented, the commissioner must

implement interventions and sanctions that apply to an unacceptable campus and continue those interventions for each consecutive year thereafter in which the campus is assigned an overall performance rating of D.

Other provisions. The commissioner is required to study the feasibility of incorporating a performance indicator that accounts for extracurricular and co-curricular student activity and may adopt such an indicator if appropriate. The commissioner may establish an advisory committee to assist in determining the feasibility of a student activity indicator and must report on the feasibility to the Legislature by December 1, 2022, unless the commissioner already has adopted an indicator.

The commissioner must adopt rules to implement the rating system and solicit input from persons likely to be affected by the proposed rule, including school trustees, administrators, teachers, and parents.

Supporters said

HB 22 would simplify the school accountability system from the five-domain rating system created in 2015 by the enactment of HB 2804 by Aycock into three domains that measure student achievement, student progress, and how well schools are doing in closing achievement gaps for educationally challenged students. It would retain HB 2804's implementation of A-F letter grades for districts in the 2017-18 school year but delay rating campuses by letter grade until the 2018-19 school year to allow schools more time to prepare for the new rating system. While some have criticized the use of letter grades, they are simple for the public to understand and promote parental involvement.

The bill would reduce the influence of test scores by adding other metrics of student achievement and using test scores to measure growth along with content mastery. The commissioner could choose the higher of the student progress or student achievement grades in assigning an overall grade to reflect a school's success in boosting the test scores of students who might still be performing below grade level. Comparing student growth among similarly situated districts and campuses would address the impact of socioeconomic disparities on the rating system. In addition, test results would be disaggregated for students who are continuously enrolled and those who are mobile to account for high student mobility that can negatively impact ratings of certain campuses.

High-performing schools could petition the commissioner to build their own systems that would equally divide accountability between the local and state systems. This would allow local districts to develop their own goals and measure how well they do at achieving those goals.

Opponents said

HB 22 would change an accountability system but still rely too much on standardized test scores. The bill would give the commissioner authority to set annual performance standards with little or no advanced notice to districts.

While the bill would delay campus A-F letter grades for one school year, it would retain the flawed letter rating system that will unfairly penalize districts with high numbers of low-income students. The bill should have at least removed the summative school letter grades for their potential to miscommunicate the quality of a school's performance.

Notes

The HRO analysis of HB 22 appeared in Part One of the May 3 *Daily Floor Report*.

Health benefits for retired school employees

HB 3976 by Ashby
Effective September 1, 2017

HB 3976 changes enrollment, premium, and benefit requirements for certain retired school employees under the TRS-Care program of the Teacher Retirement System of Texas beginning with the 2018 plan year. Eligibility for certain plans will depend on whether a retiree, dependent, surviving spouse, or surviving dependent child is eligible for Medicare.

Plans. The bill eliminates a statutory requirement that the state offer a basic health care plan at no cost for retiree-only coverage and requires a retiree who has coverage under a health benefit plan offered by TRS to pay a monthly contribution determined by the TRS board of trustees. A retiree is not required to pay a monthly contribution until the 2022 plan year if the retiree has taken disability retirement on or before January 1, 2017, is receiving TRS disability retirement benefits, and is not eligible to enroll in Medicare.

TRS must make available a high-deductible health plan, a Medicare Advantage plan, and a Medicare prescription drug plan for retirees, dependents, surviving spouses, or surviving dependent children. If TRS determines that a Medicare Advantage plan or a Medicare prescription drug plan is no longer appropriate for the group program, it may make available other health benefit plans to provide medical or pharmacy benefits. To the extent the group program has available funds, TRS must consider implementing a plan design for non-Medicare eligible enrollees in the high-deductible health plan that provides assistance in paying for preventive care, including generic preventive maintenance medications, in a manner consistent with federal law.

A retiree, dependent, surviving spouse, or surviving dependent child who is not eligible to enroll in Medicare is eligible to enroll in a high-deductible health plan offered under TRS-Care, subject to certain eligibility requirements, but is not eligible to enroll in another TRS-Care plan. A retiree, dependent, surviving spouse, or surviving dependent child who is Medicare-eligible also is eligible to enroll in a Medicare Advantage plan or a Medicare prescription drug plan offered under TRS-Care, subject to certain eligibility requirements, but is not eligible to enroll in another health benefit plan offered under TRS-Care unless TRS makes another health benefit plan available.

Funding. The state must contribute to the TRS-Care program fund 1.25 percent, rather than 1 percent, of the salary of each active employee. The bill removes the requirement that TRS pay the total cost of the basic plan for each participating retiree. Instead, the bill requires TRS, depending on the amount prescribed in the general appropriations act, to cover all or part of the cost for each retiree, surviving spouse, and surviving dependent enrolled in a health benefit plan. TRS may spend part of the money received for TRS-Care to offset a part of the costs for dependent coverage if the program is projected to remain financially solvent during the currently funded biennium.

Supporters said

HB 3976 would address a $1 billion budget shortfall that threatens the ability of TRS to continue providing health insurance to retired school employees by allowing flexibility in the structure of group health plans. It would provide a high-deductible plan for younger retirees who are not Medicare eligible, a population that has been a source of much of the rising costs for TRS-Care. The bill also would realize cost savings by requiring those who were at least 65 years old to enroll in a TRS-Care Medicare Advantage plan.

While the bill could result in higher premiums for some retirees and their spouses, there has not been an increase in retiree premiums during the past 12 years. The Legislature in recent sessions has provided supplemental funding to sustain the program, but the bill's structural changes to TRS health care plans would help stabilize the program. HB 3976 reflects the shared responsibility for health insurance between the state, school districts, employees, and retirees by increasing the state's contribution from 1 percent to 1.25 percent of active teacher payroll.

Opponents said

HB 3976 would limit the health insurance options for retired school employees, resulting in higher premiums and deductibles for many retirees. It would keep some school employees from retiring before age 65 because of the increased health care costs. Those who already have retired would be adversely impacted at a time when many are struggling to make ends meet on their retirement pension, which on average is about $2,000 per month. While the state would make a slight increase in its contributions to the program, this would not make up for years of underfunding by the Legislature.

Notes

The HRO analysis of HB 3976 appeared in Part Three of the May 3 *Daily Floor Report*.

School funding options for certain students

SB 3 by L. Taylor
Died in House committee

SB 3, as passed by the Senate, would have created two programs to help parents of low-income students and those with special education needs pay for certain educational expenses. Both programs would have been administered by the Texas comptroller.

Education savings accounts. The education savings account (ESA) program would have been available to parents of a school-age child from a household with an annual income at or below 175 percent of the amount needed to qualify for the national free or reduced-price lunch program. Students would have been required to have attended a Texas public school during the entire preceding academic year and to have resided in a school district in a county of 285,000 or more based on the 2010 census. The bill would have allowed 5 percent of the registered voters of a less populous county to petition for an election to allow children in that county to participate.

The ESA program would have provided funds in special accounts to parents for certain allowable expenses, including tuition and fees at an accredited private school or higher education institution or for online courses, required instructional materials, transportation costs up to $500 per year, certain testing fees, certain public school classes, computer hardware and software, tutors, and costs of breakfast or lunch provided by a private school. For a child with a disability, funds could have been used for educational therapies or services provided by a practitioner or provider.

The program would have been funded with state general revenue transfers and appropriations as well as gifts, grants, and donations. State funding for an eligible child would have equaled 75 percent of the state average maintenance and operations (M&O) expenditures per student for the preceding state fiscal year or, if the child had a disability, 90 percent of the state average M&O expenditures. Any funds remaining in a child's account at the end of a fiscal year would have been carried forward. When a child was no longer eligible, the account would have been closed and the remaining funds returned to the state for the ESA program.

For the first year after a child left a public school, that school district would have been entitled to receive an amount equal to 50 percent of the difference between the state average M&O expenditures per student and the amount the child's parent received. That child also would have been included for the first year in the weighted average daily attendance for purposes of determining the district's equalized wealth level under Education Code, ch. 41.

Tax credit scholarships. The bill would have created a tax credit scholarship and educational expense assistance program for eligible students. The program would have been funded by entities that pay state insurance premium taxes. Such entities would have been allowed to contribute up to 50 percent of their premium tax liability to the program and apply for credit to the comptroller. The total amount of tax credits awarded to the entities could not have exceeded $25 million per fiscal year.

A primary and secondary nonprofit educational assistance organization (EAO) selected by the comptroller would have awarded scholarships or paid educational expenses for eligible students in public or nonpublic schools. The bill would have required an EAO to allocate at least 75 percent of its annual revenue for scholarships for eligible students to attend nonpublic schools, at least 15 percent for educational expenses, and up to 10 percent for administrative expenses. An EAO would have been required to award scholarships and assistance to students who demonstrated the greatest financial and academic need.

SB 3 would have required private schools receiving funds from the program to meet certain requirements, including accreditation and annual administration of a nationally norm-referenced test or the state standardized tests.

Eligible students would have been required to have resided in a district located in a county of 285,000 or more based on the 2010 census or a county in which the residents had approved participation and to have attended a public school in Texas in the previous year. The student also would have been required to reside in a

household with income not greater than 175 percent of the income guidelines for free or reduced-price lunch, be in foster care or institutional care, have a parent on active-duty military status, or be eligible to participate in a district's special education program or have a disability. The bill would have allowed participation of some students who previously met certain eligibility requirements.

The bill would have limited the scholarship a student could have received to 75 percent of the state average M&O expenditures per student for the preceding year. A student who received a payment to an ESA also could have received a scholarship for the same year if the student was eligible for that assistance, up to an amount that did not exceed the difference between the ESA and the full private school tuition amount plus up to $500 for transportation.

A student who received a scholarship to attend a private school would have been included for the first year in the weighted average daily attendance for purposes of determining the equalized wealth level under Education Code, ch. 41 for the district the student would have attended.

Required notice. Under both programs, parents would have been provided with notice that a private school was not subject to state and federal laws on the provision of special education services in the same manner as a public school. The notice would have specified rights to which a student with a disability was entitled at a public school, including an individualized education program, educational services provided in the least restrictive environment, and due process hearings.

Supporters said

SB 3 would allow parents to make educational choices based on their child's individual needs by allowing them to tap state funds to pay for private school tuition, tutoring, and other eligible educational expenses. The bill would include income guidelines to ensure it primarily benefited lower-income families whose students may be attending a low-performing public school or a school that is failing to meet a child's special education needs. While the majority of students would remain in their traditional neighborhood schools, SB 3 could make a major impact on the lives of tens of thousands of students who are struggling to achieve a quality education needed to reach their full potential.

The two new programs created by the bill — education savings accounts and tax credit scholarships — could be combined in certain circumstances to allow a family to pay the full amount of private school tuition plus transportation and lunch costs.

The bill would have a minimal effect on most public schools because students who left most likely would be replaced by new students from families moving into Texas. For those students who did leave public school, the bill would provide the school district with transition funding by allowing it to retain for one year a portion of the state funding for that student. The tax credit program also could be used for students who remained in public school but needed extra tutoring, instructional materials, or other educational supports.

While private schools receiving state funds would not be subjected to the same testing and accountability requirements as public schools, parents of students would provide accountability by deciding if a school was serving their child's needs. The bill would require participating private schools be accredited by a recognized private school accreditation organization and to administer annually a norm-referenced test such as the Iowa Assessments.

To ensure that parents did not unknowingly give up their child's legal rights, SB 3 would require notice to parents of state and federal rights applicable to students with disabilities or special education needs. Several parents testified that their children excelled only after they left public school and enrolled in a private school that was better equipped to meet their special education needs.

Opponents said

SB 3 would transfer public funds to private schools without mandating the same level of accountability required of public schools. Private schools would not be required to follow the state curriculum, testing, or accountability rating requirements, leaving policymakers without the information needed to determine if state funds were being used properly. Under the bill, taxpayers could end up supporting religious schools that promoted ideas that run counter to American values.

The bill would divert public resources from the public school system, which already is funded at a

per-student level that is below many other states. Instead of enacting SB 3, the Legislature should boost funding to improve public schools for students with special challenges such as poverty and disabilities. As an alternative to a private school voucher program for children with disabilities, the Legislature should create a grant program to allow parents to select additional educational services from a list of providers approved by the Texas Education Agency.

The bill would offer limited choices for many low-income families due to the high cost of some private schools. Parents of students with disabilities and special education needs could lose important state and federal law protections as well as necessary therapy and other support services that school districts are required to provide.

Notes

Two House bills with provisions similar to those in SB 3 were left pending in the House Public Education Committee. **HB 1335** by Simmons would have created an education savings account program for certain children with special educational needs, and **HB 4193** by Simmons would have established a credit account program for students with disabilities to supplement public school education with funds that could have been used for courses or programs offered by a private school.

During the first called session, the Senate passed **SB 2** by L. Taylor, which would have created a tax credit for contributions to a certified educational assistance organization to provide scholarships or educational expense assistance to students with disabilities, including for private school tuition. The House Public Education Committee approved a committee substitute that would have required the education commissioner to establish an education enhancement program to provide funding for students with certain disabilities for programs and services from vendors approved by the commissioner. The bill died in House Calendars.

Improper conduct between teachers and students

SB 7 by Bettencourt
Effective September 1, 2017

SB 7 prohibits sexual contact between an educator and a student regardless of whether the student is enrolled in the district where the teacher works. It revokes the pension of school employees convicted of certain felony sexual offenses if the victim was a student. The bill also makes it a crime for a principal or superintendent to conceal a teacher's conduct intentionally and requires districts to adopt policies on electronic communications between teachers and students.

Educator conduct. The bill expands the offense of improper relationship between an educator and a student to include sexual contact with a person the school employee knows is enrolled in any Texas public or private primary or secondary school. Educators include teachers, librarians, school nurses, and counselors.

Pre-employment affidavit. An applicant for an educator position must submit, on a form developed by the Texas Education Agency (TEA), a pre-employment affidavit disclosing whether the applicant has ever been charged with, adjudicated for, or convicted of having an inappropriate relationship with a minor. An applicant who answers affirmatively must disclose all relevant facts and is not precluded from being hired if the employing entity determines based on the affidavit that the charge was false.

A determination that an employee failed to disclose required information is grounds for termination. The State Board for Educator Certification (SBEC) may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator hired an educator despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor.

License revocation. SB 7 requires SBEC to revoke the certification of an educator:

- convicted of or placed on probation for an offense for which he or she was required to register as a sex offender; or
- convicted of a felony offense against a person listed in Penal Code Title 5, which includes sex and assault offenses, if the victim was younger than 18 years old when it occurred.

SBEC also must suspend or revoke a certificate, impose other sanctions, or refuse to issue a certificate to someone who assisted another person in obtaining employment at a school district or charter school with knowledge that the person had previously engaged in sexual misconduct with a minor or student in violation of the law. The routine transmission of administrative and personnel files would not constitute forbidden assistance.

Pension forfeiture. A person who is or was an employee of the public school system is not eligible to receive a pension from the Teacher Retirement System of Texas if the person is convicted of a qualifying felony involving a student victim, including continuous sexual abuse of a child, improper relationship between educator and student, or sexual assault or aggravated sexual assault. A person who is not eligible to receive a pension is entitled to a refund of the person's retirement contributions, including earned interest. The bill contains provisions to reinstate pensions, including amounts withheld, if a person's conviction is overturned on appeal or meets certain requirements for innocence. A court may, in the interest of justice and in the same manner as in a divorce proceeding, award any portion or the entire forfeited annuity as the separate property of an innocent spouse.

Principals and superintendents. A principal is required to notify the district superintendent or charter school director no later than seven business days after:

- an educator has resigned or been terminated following an alleged incident of sexual misconduct; or
- the principal learned of an educator's criminal record.

A superintendent who receives such a report must within seven business days file a written report with

SBEC. Failure to provide the required notices may carry an administrative penalty of between $500 and $10,000. A superintendent or principal who communicates with another superintendent or principal concerning an educator's criminal record or alleged misconduct is immune from civil or criminal liability.

A principal or superintendent who fails to provide the notices with the intent to conceal an educator's alleged misconduct or criminal record commits a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000).

Investigations. The commissioner of education is authorized, during an investigation by the agency for an alleged incident of misconduct, to issue a subpoena to compel the attendance of a relevant witness. A district or charter school may give TEA a document evaluating the performance of a teacher or administrator for purposes of an investigation. Such a document is confidential unless it becomes part of a contested case.

The commissioner may authorize a special accreditation investigation when a district for any reason fails to produce requested evidence or an investigation report relating to an educator who is under investigation by SBEC.

Parental notice. District boards and charter school governing bodies must adopt policies to notify parents or guardians of a student with whom an educator is alleged to have engaged in sexual misconduct. The notice must state that the alleged misconduct occurred, whether the educator was terminated after an investigation or resigned before the investigation was completed, and whether a report was submitted to SBEC.

Training. Educator preparation programs and SBEC continuing education requirements for a classroom teacher must include information on appropriate relationships, boundaries, and communications between educators and students. Continuing education requirements for a principal must include instruction on preventing, recognizing, and reporting prohibited sexual conduct between an educator and a student.

Electronic communication policy. Each district must adopt a written policy concerning electronic communications between a school employee and a student enrolled in the district. The policy must allow employees to elect not to disclose personal telephone numbers and e-mail addresses. The policy must include provisions designed to prevent improper electronic communications between employees and students and to instruct employees how to notify appropriate administrators about an incident in which a student engaged in improper communications with a school employee.

Supporters said

SB 7 would protect students from inappropriate relationships with teachers whether or not the student attended the school or district where the educator was employed and would add to the types of convictions for which educators automatically lost their teaching licenses. The bill would address a growing problem in the state. According to the Texas Education Agency (TEA), the number of new cases involving inappropriate relationships between educators and students increased by 20 percent from fiscal year 2011 to fiscal year 2015.

Educators who abuse their positions of trust should not be allowed to receive public compensation in the form of a retirement benefit after being sentenced for a qualifying felony offense. The bill would sufficiently protect innocent spouses by allowing a court to award all or part of the retirement benefit subject to forfeiture.

Some school districts have quashed subpoenas from TEA and allowed teachers who engaged in misconduct to quietly transfer to another district. The bill would prevent this practice by increasing the agency's investigative tools and penalizing school administrators who covered up the misconduct.

Opponents said

SB 7 would criminalize activity that could occur between consenting adults who do not have a student-teacher relationship. Its focus on reporting information to civil investigators could result in unintended conflicts with local law enforcement agencies conducting criminal investigations.

Pension forfeiture laws are unjust because they represent an added penalty beyond the appropriate punishment determined by the criminal justice system. A final conviction at least should be required before taking

away an employee's pension to prevent the retirement system from potentially having to calculate and refund benefits if a member's conviction was overturned on appeal.

The requirement that applicants for jobs in Texas public schools file pre-employment affidavits disclosing whether they had ever been charged with having an inappropriate relationship with a minor could prevent candidates from being hired even if the allegations were false.

Notes

The HRO analysis of HB 3769 by K. King, the House companion bill to SB 7, appeared in Part Two of the May 6 *Daily Floor Report*.

Alternate methods to satisfy graduation requirements

SB 463 by Seliger
Effective June 9, 2017

SB 463 extends from September 1, 2017, until September 1, 2019, the requirement that districts and charter schools establish individual graduation committees to determine whether certain high school students who have failed to meet performance requirements on end-of-course exams may qualify to graduate under different standards. The alternative standards apply to students in grades 11 and 12 who failed to meet standards for not more than two of the five required exams. A student must have completed the required high school curriculum to be eligible for the alternative process, under which a committee composed of the student's parents, teachers, and principal recommends additional test remediation and completion of a project or portfolio that demonstrates proficiency in the relevant subject area.

The bill also extends until September 1, 2019, a provision allowing a student who twice did not meet the performance requirements on the Algebra I or English II end-of-course exam to satisfy these requirements by receiving a proficient score on the Texas Success Initiative test for the corresponding subject.

Beginning September 1, 2019, school districts may no longer administer the Texas Assessment of Knowledge and Skills (TAKS) exit-level exams, which were the testing requirements for graduation eligibility before the Legislature implemented the end-of-course assessments under the current State of Texas Assessments of Academic Readiness (STAAR) program.

The commissioner of education must establish a procedure to determine whether certain students who entered 9th grade under graduation requirements established by TAKS or an earlier testing program may receive a high school diploma without meeting assessment requirements for graduation, as long as they are otherwise qualified to graduate. The commissioner must designate the school district in which a student is or was last enrolled to decide whether the student qualified to receive a diploma and establish criteria for those districts to recommend alterative graduation requirements. The commissioner could authorize as an alternative requirement an alternative assessment instrument and performance standard, work experience, or military or other relevant life experience.

The Texas Higher Education Coordinating Board must report to the Legislature by December 1 of each even-numbered year the post-secondary plans of students allowed to graduate by an individual graduation committee, including whether they entered the workforce, enrolled in higher education, or enlisted in the armed forces or Texas National Guard.

Supporters said

SB 463 would continue for two more school years a successful alternative to state testing requirements for high school graduation. Since 2015, districts have used individual graduation committees successfully to evaluate thousands of students who had not passed one or two of their five required end-of-course exams. The committees may consider the entirety of a student's work, allowing a holistic process that has been especially helpful for students with language barriers or learning disabilities or who experience testing anxiety. Extending the alternative process would help additional deserving students earn their high school diplomas.

Data collected by the Texas Education Agency shows that fewer than 3 percent of high school graduates in the 2015 and 2016 graduating classes received their diplomas through a graduation committee. For the 2016 graduating class, about 70 percent of the nearly 13,000 students assigned a committee were approved for graduation, which demonstrates that the committees are not merely rubber-stamping all students for graduation.

The bill also would require the commissioner of education to establish a process for students who entered 9th grade before implementation of STAAR assessment requirements to demonstrate they are qualified to receive their diplomas through other measures, including work or military experience. This would allow

students, including those still trying to pass previous versions of state exit-level exams, such as the TAKS, to obtain their diplomas and move on with their lives.

Opponents said

SB 463 would continue a process that effectively amounts to social promotion and bypasses the state's long-standing requirement that students pass high school exit-level exams. Weakening testing standards reduces the value of a diploma at a time when the majority of high school graduates are not prepared for college freshman level English and math courses. The individual graduation committee process was established in 2015 to help students who were struggling with STAAR end-of-course exams and should be allowed to expire as planned now that students and teachers have become more familiar with those exams.

Other opponents said

The Legislature should make the graduation committee process a permanent alternative for high school students. The federal government does not require a high-stakes exit exam and neither do most other states. Of the minority of states that do require an exit-level exam, nearly all allow some kind of alternative option for students to demonstrate their eligibility to graduate.

Notes

The HRO analysis of SB 463 appeared in Part One of the May 22 *Daily Floor Report*.

Taxation and Revenue

* Finally approved

Phasing out the franchise tax

HB 28 by D. Bonnen
Died in Senate committee

HB 28 would have required the comptroller to set franchise tax rates to reduce total collections by a certain amount every fiscal biennium. That amount would have been either the ending balance of general revenue related funds in the preceding biennium or $3.5 billion, whichever was less. The bill would have eliminated the franchise tax when the adjusted tax rate was 15 percent or less of the fiscal 2018 tax rate.

Supporters said

HB 28 would boost economic growth by eliminating the most burdensome tax currently imposed in Texas while maintaining the state's ability to meet its obligations.

The franchise tax places significant limitations on the Texas economy, and its phase-out could result in a gain of up to $16 billion in real personal income and the creation of nearly 130,000 jobs in Texas. In addition to the direct economic costs, the franchise tax imposes compliance costs on businesses, which ultimately outweigh the limited amount of revenue the franchise tax contributes to the state budget. These compliance costs can discourage businesses that otherwise would consider moving to Texas.

While the franchise tax most directly burdens businesses, those costs are passed on to consumers in the form of higher prices and lower incomes. According to data from the comptroller, the franchise tax disproportionately burdens lower-income Texans as a percentage of their total household income. Although the aggregate impact of HB 28 would affect upper-income quintiles more, lower-income citizens would see a more direct benefit as a percentage of their income.

While HB 28 would reduce revenue available to the state in the future, based in part on balances in general revenue dedicated accounts, it is still up to the Legislature to decide whether to spend the money in those accounts. For purposes of certification, the money still would be fungible.

Cutting the franchise tax would be preferable to other spending alternatives or buying down property taxes because the franchise tax is so economically harmful. HB 28 would put money back into the economy, allowing businesses to create more jobs, which in turn increases consumer spending and other types of tax collections. For instance, in 2015 the Legislature cut the franchise tax rates by 25 percent with HB 32 by D. Bonnen, but revenue from franchise tax collections was reduced by only around 18 percent, possibly due to this dynamic effect.

Opponents said

HB 31 would cost the state revenue that should be used to fund schools. It also could place the state in a precarious fiscal position in future biennia and threaten its ability to meet its long-term obligations.

Any positive effects from the bill merely would make the tax system in Texas more regressive. Eliminating a revenue stream that is paid mostly by businesses would leave Texas almost totally reliant on the sales tax, which is highly regressive and hurts low-income citizens most. According to the Legislative Budget Board, less than 6 percent of the reduction in tax incidence would go to the lowest income quintile, whereas the highest income quintile would receive 28 percent of the total reduction in tax incidence.

The bill would result in deep cuts to state services. It would treat the ending balance of general revenue related funds as though the revenue was totally available. However, in fiscal 2016-17, around $3.5 billion of the roughly $4.1 billion ending balance consisted of general revenue dedicated funds not spent but available to be used for certification. These funds are not simply general revenue; their use is restricted to particular purposes. That $4.1 billion could include up to $2.5 billion in sales tax revenue that is constitutionally required to be transferred to the State Highway Fund. These factors create an illusion of available revenue, even though the state is obligated to use it for a particular purpose.

The bill also would limit the state's ability to address possible future crises in areas such as the Employees Retirement System of Texas, the Teacher Retirement System, and the Texas Tomorrow Fund. Liabilities from these programs must be adequately funded to keep them actuarially sound. Texas should ensure it can fulfill its obligations before cutting taxes.

HB 28 would not reduce the total tax burden but merely would shift it to other state revenue streams, the property tax system, and local governments. The property tax relief fund receives about half of its revenue from the franchise tax, and eliminating this method of finance would require the state to make up the difference with general revenue. This would reduce general revenue that otherwise would be available to further provide property tax relief or increase the state's share of education funding, potentially resulting in businesses and individuals paying higher property taxes.

Education in Texas is critically underfunded, and the state will need additional funds in future budgets to cover its growing needs. Fully funding public education and higher education would have a better return on investment than any tax cut.

Notes

The HRO analysis of HB 28 appeared in Part Two of the April 27 *Daily Floor Report*.

Reappraisal of certain property damaged in a disaster

HB 331 by S. Davis, First Called Session
Died in the Senate

HB 331 would have required, rather than allowed, the reappraisal of a property in an area declared to be a disaster area by the governor if the Federal Emergency Management Agency (FEMA) estimated the property had sustained 5 percent or more damage as a result of the disaster. As in existing law, which allows taxing units to authorize reappraisal of property within their jurisdiction, the cost of reappraisal would have been borne by the taxing unit. However, a property owner could have declined the reappraisal under HB 331.

The appraisal district would have had to complete the reappraisal within 45 days after the governor declared the area a disaster area or as soon as practicable after FEMA completed the damage estimates.

Supporters said

HB 331 would ensure that property owners affected by disasters were not taxed as if the disaster had never occurred. Current law merely allows taxing units to request reappraisals from the appraisal districts, providing no guarantee that a property owner whose home or business had been wiped out would not have to pay taxes on the full value of the property despite the immense loss. Due to its diverse geography, Texas leads the nation in the number of federally declared disasters, and this bill is one way the Legislature could provide much-needed disaster relief to property owners.

The bill would increase consistency and fairness in appraisals. Because current law does not require individual taxing units in disaster areas to request reappraisals, different taxing units can differ in how they value identical property that has been seriously damaged. In fact, a single property can be taxed differently by different taxing units, depending on whether the unit has requested a reappraisal.

HB 331 would limit the fiscal impact to taxing units. It would apply only to property with serious damage and, as provided in current law, would affect only a portion of a tax year. The state also may provide disaster grants to assist the most dramatically impacted taxing units.

Opponents said

HB 331 could cause revenue problems for some taxing units. Many major disasters, such as hurricanes, strike late in the summer right before the close of the tax year, when the taxing unit already is low on funds. The reappraisal process required by the bill could significantly delay an already reduced revenue stream for taxing units suffering from a disaster. This could cause service interruptions, especially within small taxing units that likely do not have large reserve funds.

Notes

The HRO analysis of HB 331 appeared in the August 9 *Daily Floor Report*.

During the regular session, the House approved **HB 513** by S. Davis and the Senate approved **SB 717** by V. Taylor, both identical to HB 331, but neither bill passed the opposite chamber. The HRO analysis of HB 513 appeared in Part Two of the April 25 *Daily Floor Report*.

Changes to property tax procedures and rollback rate

SB 1 by Bettencourt, First Called Session
Died in conference committee

SB 1, as passed by the House, would have reduced the rollback rate and made numerous changes to procedures for appraisal review board (ARB) hearings, eligibility requirements for ARB members and arbitrators, notices delivered to taxpayers, and reporting requirements for appraisal districts and taxing units.

Rollback rate. SB 1 would have expanded the number of taxing units that must automatically hold elections to ratify a change in a tax rate that would increase revenue collected from property taxes beyond a certain percentage (the "rollback rate"). The bill also would have reduced the rollback rate multiplier for these taxing units from 8 percent to 6 percent.

The bill would have applied these changes to all taxing units other than a junior college district or a taxing unit other than a school district for which the proposed tax rate:

- was 2 cents or less per $100 of taxable value; or
- would raise $25 million or less in property tax revenue.

Changes to appraisal review boards. The bill would have amended many requirements for ARB hearing procedures and the composition and education of ARB members. For example, ARBs would have been required to establish special panels of members with additional credentials to hear protests on certain properties worth more than $50 million.

Taxing units also no longer could have challenged the appraisal of a category of property at ARB hearings.

Notification and reporting. SB 1 would have changed language on the notice of appraised value sent to property owners to remove the estimated tax due based on the previous year's tax rate and instead required an estimate of a tax bill broken down by taxing unit to be placed online in a database maintained by the appraisal district.

Rates set by taxing units would have been reported to the comptroller and subject to new publication requirements.

Supporters said

Rollback rate. SB 1 would ensure that larger cities and counties effectively communicated to voters the reasons for a drastic increase in taxes, which could reduce voter dissatisfaction with property taxes and help them better understand how tax dollars helped their community.

Under current law, rollback elections for city and county tax rates are possible but happen only by a petition of a certain percentage of the voters. In heavily populated areas, this makes rollback elections practically impossible as they may require tens of thousands of signatures to be gathered on a tight deadline. Requiring automatic rollback elections would ensure that taxpayers had a direct say in their government's budget process and would avoid a petition process that puts the burden on the residents.

The current 8 percent limit was enacted when inflation was very high, meaning the current limit has become effectively higher over the years and no longer provides taxpayers the intended protections. Even with an 8 percent limit, a locality's tax burden could double in nine years.

The bill would not impact local entities' budget process or make it less efficient, as taxing units must make the same decisions now with an 8 percent rollback rate. SB 1 merely would compress those calculations and compel cities to use taxpayer dollars more conservatively. Few taxing units regularly would exceed the 6 percent limit, and those that did should have to make their case to taxpayers. Bond ratings would not necessarily be threatened because this bill would only tangentially affect one factor among many in bond ratings.

SB 1 should be seen as a step in increasing transparency and improving truth in taxation rather than one intended to provide tax relief. While the state could increase its share of education funding, this bill is focused on ensuring that taxpayers have an effective voice in their local governments.

SB 1 takes a balanced approach with a 6 percent multiplier. While reducing the rollback rate further would empower taxpayers in more situations, SB 1 would improve current law with automatic rollback elections in populous areas. This would ensure increased transparency and communication between taxing units and taxpayers.

Changes to appraisal review boards. The bill would prohibit taxing units from protesting the level of appraisal for an entire category of property because this mechanism is seldom used and rarely successful. These protests have proved onerous and impractical, making it time to remove this authority. Eliminating these protests would not result in a significant unfair shift of the tax burden onto other property owners because of their limited impact.

The bill would create a special ARB panel for high-value properties in populous districts, which would have more stringent standards for its members than other ARB panels. This would ensure that protests on properties with the greatest effect on taxing units' budgets were subject to the best possible standard of review, potentially reducing litigation as more cases would be resolved at the administrative level. Expanding eligibility for these panels to properties worth less than $50 million would reduce their ability to focus on high-value property.

Notification and reporting. Under current law, appraisal districts must notify property owners of their estimated tax due using the previous year's tax rates. This has proven confusing because it suggests that the appraisal district is responsible for setting the tax rates. Even though appraisal notices say they are not tax bills, they frequently are mistaken for them. SB 1 would eliminate this confusion by requiring a notice that directs taxpayers to a database with details on which taxing units were responsible for each part of the property tax burden.

Opponents said

Rollback rate. SB 1 would impair the ability of localities to budget and plan for growth, while providing little savings to taxpayers. Many fast-growth cities may need to increase beyond the 6 percent rollback rate regularly, and this bill could make their budget process dependent on voter approval every year, jeopardizing their ability to provide essential services. While voters might approve the higher tax rate, there is no guarantee they would do so even if it were desperately needed. Texas relies heavily on local revenue because of spending austerity at the state level, and the state should not restrict the ability of localities to ensure residents receive the services they need.

Contrary to its intent, this bill would incentivize higher tax rates and greater tax burdens, as localities may choose to levy the highest possible tax rate in the current tax year to avoid a rollback election in the next tax year or to build up cash reserves for future emergencies. It also could incentivize inefficient multi-year budgeting, instead of a pay-as-you-go system where the locality imposes a tax burden only when it is necessary.

Requiring automatic elections could put excellent bond ratings for Texas cities at risk. Credit rating agencies give significant consideration to the flexibility that cities have to adjust their budgets year to year. The bill could reduce those ratings, costing taxpayers more in interest on bonds.

SB 1 is unnecessary, as local government officials can be held responsible directly by voters for decisions to increase taxes with a specific rollback election. This bill would increase costs by triggering more elections.

The bill would not result in significant savings to homeowners because it would not affect the main source of the property tax burden in the state. Most property taxes are levied by school districts and already are subject to automatic rollback elections. Property tax reform instead should start by increasing state spending on education, as this would be the most direct way to address high property taxes.

Changes to appraisal review boards. While SB 1 contains important changes that could improve transparency, the Legislature should be careful to maintain the independence of ARBs and avoid saddling appraisal districts with administrative and reporting burdens.

The bill should not prohibit taxing units from protesting categories of appraisals, as this is the only safeguard that currently exists against appraisals that are too low. Eliminating these protests would eliminate the tool used to keep a check on categories of property that are undervalued, often because property owners exert pressure to keep appraisals low. This could unfairly shift the tax burden onto other property owners.

Other opponents said

Rollback rate. SB 1 would not go far enough and should further reduce the rollback rate. It is important for taxpayers to know and have a voice in their local taxing units' budget process, and a 6 percent rollback rate would not trigger an election for many significant tax increases.

Notes

The version of SB 1 discussed above was amended in conference committee to include provisions in **HB 32** by D. Bonnen, which was approved by the House on August 3. The HRO analysis of SB 1 appeared in the August 12 *Daily Floor Report*. The analysis of HB 32 appeared in the August 2 *Daily Floor Report*.

Transportation

* Finally approved

Statewide ban on texting while driving

HB 62 by Craddick
Effective September 1, 2017

HB 62 makes it a misdemeanor for a driver to use a portable wireless communication device to read, write, or send an electronic message while operating a motor vehicle unless the vehicle is stopped. A first offense is punishable by a fine between $25 and $99, and a subsequent offense carries a fine between $100 and $200. However, if such an offense results in the death or serious bodily injury of a person, it becomes a class A misdemeanor punishable by a fine of up to $4,000 and one year in jail.

A defense to prosecution exists if the driver was:

- using a hands-free device, including voice-operated technology;
- using the phone to navigate or play music;
- reporting illegal activity or summoning emergency help;
- reading an electronic message that the person reasonably believed concerned an emergency; or
- relaying information to a dispatcher or digital network through a device affixed to the vehicle as part of the driver's job.

The bill prohibits the seizure or inspection of a driver's cell phone by a peace officer unless authorized by another law.

HB 62 preempts ordinances and other regulations on texting while driving adopted by local governments.

Supporters said

HB 62 would save lives and prevent injuries by reducing distracted driving incidents. It also would provide more regulatory consistency statewide on using mobile devices while driving and would implement common-sense restrictions that were not overly burdensome.

The Texas Department of Transportation has reported that distracted driving resulted in about 470 fatalities and more than 18,000 injuries on Texas roads in 2015, with similar numbers of incidents in previous years. These are likely conservative estimates because many drivers involved in crashes are hesitant to admit they were distracted.

Drivers are more likely to crash while texting, although the magnitude of the effect varies among studies. Crashes caused by distracted driving burden emergency services and health care providers and impose economic costs through higher insurance premiums and lost productivity and wages.

HB 62 would be effective at reducing texting while driving. A statewide ban would create a culture of safety and a deterrent that a set of local regulations could not achieve. That certain jurisdictions have no prohibition on texting while driving sends a message that it is okay to text and drive in spite of evidence of the associated risks. A 2016 study of AT&T's wireless customers estimated that the four states without full texting-while-driving bans have about a 17 percent higher rate of texting while driving than the other 46 states.

Local ordinances and state law already prohibit texting while driving in certain circumstances, and none of the 46 states that have adopted statewide laws report problems enforcing them. Texting-while-driving bans are enforced no differently than many other traffic laws, such as those governing the use of seat belts or speeding, including many laws that have affirmative defenses in statute.

HB 62 would create more regulatory certainty by establishing a uniform set of rules to replace the more than 100 individual city regulations that currently govern texting while driving in Texas. It is not necessary to eliminate local laws aimed at other aspects of using a mobile device while driving, such as those forbidding drivers from talking on a cell phone unless they are using a hands-free device. The bill also would fill a gap in rural, unincorporated areas with no city regulations. In these areas, where many roads have two lanes with no physical divider between them, texting while driving increases the risk of deadly head-on collisions.

The bill would not overly burden drivers because it would allow them to use phones for certain low-risk purposes, such as GPS navigation and voice-activated features. It is focused on eliminating the most harmful forms of distracted driving.

Texting while driving is not merely a personal choice. It is a decision that could kill or injure pedestrians and other drivers. Driving is a privilege, and no one has a right to text and drive.

Opponents said

HB 62 would be ineffective at improving public safety and in some cases actually could aggravate the effects of distracted driving. Rather than impose government overreach into the lives of citizens, the state instead should pursue other policies to curb distracted driving and leave the issue in the hands of local jurisdictions.

Although texting while driving is irresponsible behavior, studies are mixed on whether texting-while-driving bans actually reduce fatalities or crashes. A 2010 report from the Highway Loss Data Institute hypothesized that such laws could cause drivers to conceal their phones in their laps, reducing attention to the road and increasing accidents. Researchers with the Insurance Institute for Highway Safety reviewed 11 other papers on texting-while-driving bans and found that the ultimate effect on traffic accidents and fatalities is unclear. This could be because texting while driving accounts for a relatively small percentage of distracted driving.

Instead of implementing an ineffective government ban, the state should focus on including important information in driving safety and driver's education courses and public messages. Criminalizing texting while driving ultimately could be counterproductive to the progress made with such initiatives.

This bill, while well intentioned, would be difficult to enforce because law enforcement would be hard-pressed to determine whether someone was texting or using a phone for a lawful reason. Laws that are not enforceable reduce the credibility of the law. In addition, the affirmative defenses in the bill would place the burden improperly on defendants to prove their innocence.

HB 62 would treat texting while driving as a state issue when it is better handled at the local level. Texting while driving may be a more severe problem in some areas of the state than it is in others, and municipalities are in the best position to tailor these laws to address their unique circumstances.

Other opponents said

While HB 62 would create a uniform law to govern texting while driving in Texas, the Legislature should go further to preempt all local ordinances that regulate or prohibit the use of cell phones and similar devices while driving. This would ensure that all drivers were held to the same standard across the state with regard to the use of wireless communication devices.

Notes

The HRO analysis of HB 62 appeared in the March 15 *Daily Floor Report.*

SB 15 by Huffines, which died in the House during the First Called Session, would have preempted all local ordinances prohibiting the use of cell phones while driving.

State regulation of transportation network companies

HB 100 by Paddie
Effective May 29, 2017

HB 100 preempts local regulations on transportation network companies (TNCs) and establishes a statewide regulatory and licensing procedure through the Texas Department of Licensing and Regulation (TDLR).

The bill defines a TNC as an entity that enables a passenger to prearrange a ride with a driver exclusively through the entity's digital network. The term does not include an entity that provided street-hail taxicabs, carpools, or limousine services that could be arranged through a method other than a digital network.

HB 100 gives the state exclusive authority to regulate TNCs. Localities are prohibited from imposing a licensing requirement, regulating entry to the market, or imposing a tax on TNCs or their operations. However, an airport or cruise ship terminal operator may establish certain regulations and a reasonable fee for TNCs that provide services at the airport.

State permit. Under the bill, TNCs must receive a permit from TDLR before operating in the state. Permit holders must pay an annual fee to TDLR to cover the department's costs of administering the bill and must adhere to certain operational practices.

Requirements for drivers, vehicles. HB 100 prohibits TNCs from allowing a driver to log into the digital network until the TNC confirmed that the individual:

- was at least 18 years old;
- had a valid driver's license; and
- had proof of registration and insurance on each vehicle to be used for TNC services.

TNCs also are required to review a potential driver's driving record and perform a background check on each driver that searches the national sex offender registry and criminal records in multiple states and jurisdictions. Anyone found in the national sex offender registry is not be permitted to log in as a driver to the digital network. Drivers are disqualified if they have a certain number of previous convictions within varying periods of time, including:

- more than three moving violations in past three years;
- fleeing or attempting to elude a police officer, reckless driving or driving without a valid driver's license in the past three years;
- driving while intoxicated, fraud, felony property damage, theft, use of a motor vehicle to commit a felony, or an act of terrorism or violence in the past seven years.

Drivers are classified as independent contractors, as long as both the driver and the TNC agreed to the classification in writing and the TNC does not impose certain limitations on drivers' hours, driving territory, or engaging in other occupations.

The bill requires that vehicles used to provide TNC services have four doors, have passed a state inspection, and have a maximum capacity of eight, including the driver.

Accessibility and nondiscrimination. TNCs are required to adopt a policy prohibiting drivers from discriminating on the basis of a passenger's location or destination, race, color, national origin, religion, sex, disability, or age.

The bill also prohibits a TNC from imposing an additional charge for transportation of individuals with physical disabilities because of those disabilities or from denying service to passengers with service animals. If a passenger needs a wheelchair-accessible vehicle, the bill requires TNCs either to provide service or direct the passenger to an alternative provider if one is available.

HB 100 also requires TNCs to create a two-year accessibility pilot program in one of their four largest markets within 90 days of obtaining an operating permit. In the pilot programs the TNC must offer services to people who are disabled and ensure that any necessary referrals to providers of wheelchair accessible services do not cause an unreasonable delay.

Recordkeeping. TNCs must maintain records showing compliance with the provisions in the bill for two years, individual ride records for at least five years

after the date of the ride, and driver records for at least five years after the driver is no longer authorized to log into the company's network. The bill prohibits certain disclosures of a passenger's personally identifiable information to a third party.

TDLR may not disclose records from the TNC to a third party, except to comply with a court order or subpoena, and is required to take all reasonable measures to secure the information.

Enforcement. TDLR is allowed to suspend or revoke the permit of a TNC that did not meet the requirements of the bill.

Supporters said

HB 100 would eliminate the patchwork of local rules that limit the number of TNC drivers, thereby increasing transportation options for Texans. In place of these local rules, the bill would establish common-sense statewide regulations that maintained public safety while securing the economic and societal benefits that come with increased transportation options.

State authority. The bill would eliminate burdensome local regulations, giving citizens easier access to a source of income. As most TNC drivers work part time, preemption of local regulations would allow citizens to quickly supplement income after a job loss or other economic setback.

HB 100 would establish a more efficient statewide market. TNCs and drivers currently need city-specific permits in many municipalities, but it is not unusual for TNC drivers to travel from one city to another over the course of a day. The regulatory framework should reflect that reality.

This bill would increase access to transportation, which benefits consumers, businesses, and public safety. Local rules create barriers to entry in each market, reducing the number of available drivers and acting as a bottleneck on the economic benefits of TNCs. More transportation options also would provide extensive societal benefits. A Temple University study found the least expensive level of Uber service alone led to a reduction of up to 5 percent in motor vehicle homicides, largely caused by drunk driving, per quarter in California.

The bill would be an acceptable infringement on local control because current municipal regulations are eroding rather than protecting liberty. Local control is a tool to increase freedoms, rather than an end goal in and of itself, so it would be acceptable for the state to limit local control of TNC rules.

Requirements for drivers. The bill would eliminate burdensome local regulations that force consumers to accept regulations with higher costs. For example, some local regulations required fingerprint background checks, which do not significantly improve passenger safety. No transportation option is entirely safe, and TNC business practices, which are motivated by consumers choosing services that protect riders and avoiding those that do not, are sufficient to ensure adequate safety. All TNCs still would be required to use accredited multi-state commercial background checks and screen against the national sex offender registry. Additionally, security features built into TNCs, including GPS tracking, driver photos, and standards based on rider reviews, provide acceptable rider safety.

Applicability. While taxicabs and limousines also could be regulated at the state level, the regional nature of TNC services makes the state rather than municipal level of government the most appropriate place for TNCs to be regulated.

Opponents said

HB 100 would reduce public safety, unnecessarily harm fundamental principles of government like local control, and unfairly disadvantage taxicab and limousine companies competing with TNCs.

State authority. The bill would harm the ability of localities to maintain a level of public safety that suits their citizens. Local regulations ensure that TNCs, which can be large, multinational corporations worth billions of dollars, are held strictly accountable to local standards. City officials are more directly accountable and responsive to constituents than state regulators and therefore better able to create policies reflecting local values. The Legislature should not second-guess the will of local voters with the bill.

Municipal regulations are not an excessive burden. TNCs operate and expand in cities with stringent requirements, and these cities have not experienced a shortage of drivers. Moreover, local rules do not

substantially slow the process of signing up to drive. Most municipalities that require drivers to have licenses issued by the city also issue provisional licenses allowing a driver to drive temporarily while completing the application process. Therefore, state preemption would not result in additional societal benefits, such reductions in drunk driving, not found under local regulations.

Requirements for drivers. The bill would eliminate municipal ordinances that voters and localities have selected to increase public safety. City-mandated fingerprint background checks reduce risk to passengers and therefore are worth the added cost.

Fingerprint background checks are considered the gold standard because they involve more records and reveal more information than other methods. Other forms of background checks may be vulnerable to fraud and misidentification, but fingerprints nearly eliminate the chance of failing to identify someone with a criminal record. The city of Houston has reported that several applicants for vehicle-for-hire licenses who passed a commercial, multi-state background check were later found by a fingerprint background check to have committed serious crimes. This bill would preempt mandates made by cities in response to these concerns.

Applicability. The bill would exacerbate the effects of an unfair playing field by preempting regulations on TNCs but not on taxicabs, which provide the same basic public service. Taxicabs generally are heavily regulated at the local level and subject to limits on fares, vehicle appearance, and number of vehicles, putting them at a disadvantage compared to TNCs, which would not be subject to such restrictions under the bill.

Other opponents said

Applicability. Instead of preempting only regulations on TNCs, the Legislature should preempt all regulations on vehicles-for-hire, enabling consumer choice to regulate the market. This would ensure taxicabs and limousines were able to compete on an even playing field with TNCs.

Notes

The HRO analysis of HB 100 appeared in the April 19 *Daily Floor Report.*

Continuing the Texas Department of Transportation

SB 312 by Nichols
Generally effective September 1, 2017

SB 312 continues the Texas Department of Transportation (TxDOT) until September 1, 2029, and revises numerous provisions governing the agency, including ones relating to project development and selection, contracting, toll roads, aircraft pooling, outdoor sign regulation, and reporting and coordination requirements. It also requires TxDOT to publish information related to the Unified Transportation Plan, the Long-Term Passenger Rail Plan, and status of projects across the state, and it names several highways.

Project development and selection. Under the bill, the Texas Transportation Commission (TTC) must evaluate projects in the unified transportation program based first on strategic need and potential contribution toward meeting the strategic goals. Only after considering these factors may TTC consider other criteria such as funding availability and project readiness.

SB 312 requires TxDOT to develop performance measures for the project development process for each district and to review and evaluate activities regularly based on these measures.

Contracting. TTC must adopt rules to establish a range of contract remedies to be included in all low-bid highway improvement contracts and develop a process and criteria for when to apply each contract remedy.

Certain existing rules now must include criteria for identifying projects that have a significant impact on the traveling public and for calculating the true cost of travel delays. Rules on reviewing specific contractors must include criteria for modifying a contractor's capacity to bid on future contracts when appropriate.

SB 312 also explicitly requires TxDOT contractors and subcontractors to participate in the federal E-verify program and directs TTC to develop procedures to administer and enforce this requirement.

Tolling. Any future financial assistance provided to an entity outside of TxDOT for the construction or purchase of a toll road must be repaid and distributed to the district in which the project exists.

SB 312 limits TxDOT's ability to create new toll roads in cases where an existing non-tolled highway or HOV lane already exists.

The bill also places various limits on the collection of toll revenue. It limits administrative fees on unpaid toll bills for a road operated by TxDOT to $48 in a 12-month period, and limits the current $250 misdemeanor to one conviction per year for a customer with two or more unpaid invoices.

SB 312 removes tolls from SH 255 in Webb County. It also would prohibit future tolls on César Chávez Freeway in El Paso if the Camino Real Regional Mobility Authority approves the removal of current tolls.

Aircraft pooling. The bill removes references to the State Aircraft Pooling Board, which the Legislature abolished and transferred to TxDOT in 2005. TxDOT must create a new long-range plan for the aircraft in the pool and may include capital costs recovery in rates if doing so would be a practicable way to replace aircraft in the pool. The bill also limits the use of state aircraft.

Outdoor signs. SB 312 prohibits billboards built before March 2017 from being taller than 85 feet and disallows TxDOT from creating certain regulations on electronic billboards in Laredo. It also allows TxDOT to make agreements with local governments on aesthetic entrances to their cities.

Reporting and coordination. SB 312 requires several new reports, including a list of completed highway projects by district and the estimated economic impact of highway closures due to road construction. TxDOT also must publish certain information on the Statewide Transportation Plan on its website under a regularly updated dashboard. Crash reports submitted by law enforcement now must be uploaded electronically.

The bill requires TxDOT to hold a hearing when a project would substantially change the layout or function of a roadway. TxDOT also must communicate directly with municipal public officials before signing

a highway improvement contract if the construction would result in road closures in the area.

TTC must adopt rules governing the alignment between TxDOT and metropolitan planning organizations, including on funding forecasts, statewide project recommendation criteria, and processes for allowing metropolitan planning organizations to access TxDOT's information systems, software, and technical assistance.

Supporters said

SB 312 would continue TxDOT for 12 years, allowing it to perform its vital work of ensuring the safe and efficient transport of people and goods across Texas and would build on recent measures to increase the agency's transparency.

Project development and selection. Strategic needs should be considered before and separate from the more practical scheduling considerations when selecting a project. Practical matters still could be considered under the bill, but project selection should be prioritized in accordance with the strategic goals.

Contracting. TxDOT frequently struggles with significant contractor-fault construction delays on low-bid contracts because the state does not currently use all contract remedies. As a result, TxDOT has few options to incentivize enforcement of a contract without declaring that the contractor is in default. The bill would require the Texas Transportation Commission to develop and implement appropriate contract remedies and evaluate past performance of a particular contractor before considering a bid, thereby increasing TxDOT's ability to enforce contracts and ensure projects were completed on time.

Tolling. In conjunction with recent measures to boost transportation funding, SB 312 would reduce the creation of new toll roads. The state should not create new toll roads after the recent drastic increases in appropriations for transportation. The removal of tolls on SH 255 in Webb County would allow the road to be used for its intended purpose of providing much-needed congestion relief for the city of Laredo by diverting truck traffic off of Interstate 35.

Aircraft pooling. The bill would provide much-needed direction to TxDOT on aircraft pooling, allowing it to plan for replacing the aircraft or study alternatives, such as private charters. With five of the six planes more than 30 years old, there are increased maintenance costs and serious safety concerns. Additionally, the bill would require verification that the requested travel was for official state business and restrict the definition of cost-effectiveness to ensure aircraft were used only when appropriate.

Outdoor signs. Texas needs to re-implement certain provisions of the Texas Highway Beautification Act, which was struck down by a recent court decision. SB 312 would put Texas back in compliance with parts of the federal Highway Beautification Act and maintain the state's eligibility for certain federal funds.

Reporting and coordination. Requiring TxDOT to hold hearings when a project would result in substantial changes to a roadway would better allow local residents to give the department feedback and stay adequately informed.

The bill would clarify the relationship between TxDOT and metropolitan planning organizations and improve collaboration on complex projects. Rules to govern the relationship would increase the effectiveness of both TxDOT and metropolitan planning organizations in establishing mechanisms and procedures to plan and select complementary projects.

Opponents said

While SB 312 makes some important changes, the Legislature should be careful not to overly constrain TxDOT's flexibility and create too many mandates that would increase the administrative burden on the department.

Project development and selection. Under SB 312, certain factors such as funding availability and project readiness would be secondary to long-term strategic considerations. Instead, these factors should be considered equally to allow the Texas Transportation Commission the flexibility to prioritize projects that were more immediately practical and to avoid delays in putting funding to work.

Tolling. SB 312 would limit TxDOT's ability to create new toll lanes, which would reduce the options available to finance projects. Even though the state has significantly increased appropriations to transportation projects in recent years, the funding has not been enough to adequately reduce high levels of congestion. The bill also would go too far by prohibiting grants from being used for toll projects. This would effectively remove the ability of metropolitan planning organizations to use state formula funds for future toll projects and avoid acquiring debt.

Removing tolls on SH 255 in Webb County would require the diversion of funds from other projects for maintenance before the state had fully recouped the $20 million spent to purchase the road.

Reporting and coordination. The bill should not require hearings on a project that would substantially change the layout or function of an existing road. These hearings currently are held on request, and the state already must hold certain public meetings under the National Environmental Policy Act. Because TxDOT must rent a venue, prepare presentations, and pay for travel costs of engineering staff, the bill would impose a substantial cost for hearings, most of which likely would not be well attended.

While the focus on helping metropolitan planning organizations align with TxDOT is valid, the bill effectively would require TxDOT to align its project recommendation criteria and funding forecasts with those of the organizations. However, TxDOT provides funding and support to metropolitan planning organizations and therefore should not have to rely on the organizations' forecasts or project recommendation criteria.

Other opponents said

SB 312 should include a requirement for reporting contract overruns and delays and any associated reasons, especially for metropolitan planning organizations, whose board members are not necessarily transportation experts focused on the outcomes of the contracts.

Notes

The HRO analysis of SB 312 appeared in Part One of the May 16 *Daily Floor Report*.

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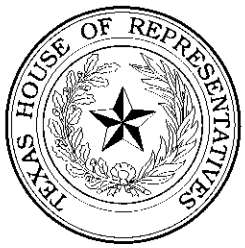

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