



# FOCUS *report*

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## Major Issues of the 86th Legislature

During its 2019 regular session, the 86th Texas Legislature enacted 1,429 bills and adopted 10 joint resolutions after considering 7,541 measures filed.

This report includes some of the highlights of the session. It summarizes many proposals that were approved and some that were not, and it includes arguments offered for and against each measure as it was debated.

Proposals considered by the Legislature included revising the property tax system and the school finance system, addressing state and local disaster response and recovery efforts, and revising state policies on mental health and school safety. The Legislature also approved a state budget for the fiscal 2020-21 biennium and continued numerous agencies after their review by the Sunset Advisory Commission. The legislation featured in this report is a sampling and not intended to be comprehensive.

Other House Research Organization reports covering the 2019 session include those examining the bills vetoed by the governor and the constitutional amendments on the November 5, 2019, ballot.



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# Bills in the 86th Legislature

	Introduced	Enacted	Percent enacted
House bills	4,765	969	20.3%
Senate bills	2,559	460	18%
<b>TOTAL bills</b>	<b>7,324</b>	<b>1,429</b>	<b>19.5%</b>
House joint resolutions	147	7	4.8%
Senate joint resolutions	70	3	4.3%
<b>TOTAL joint resolutions</b>	<b>217</b>	<b>10</b>	<b>4.6%</b>

Includes 56 vetoed bills — 41 House bills and 15 Senate bills

	2017	2019	Percent change
<b>Bills filed</b>	6,631	7,324	10.5%
<b>Bills enacted</b>	1,211	1,429	18%
<b>Bills vetoed</b>	50	56	12%
<b>Joint resolutions filed</b>	169	217	28.4%
<b>Joint resolutions adopted</b>	9	10	11.1%
<b>Legislation sent or transferred to Calendars Committee</b>	1,686	2,071	22.8%
<b>Legislation sent to Local and Consent Calendars Committee</b>	974	909	-6.7%

Source: Texas Legislative Information System, Legislative Reference Library





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# Business Regulation and Economic Development

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\*Finally approved

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# Regulating the production of hemp, hemp products

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## HB 1325 by T. King

*Effective June 10, 2019*

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**HB 1325** regulates the commercial production of hemp. It establishes the intent of the Legislature that the state have primary regulatory authority over hemp production and products in Texas. The bill requires creation of a state hemp plan, regulates the manufacture and sale of hemp products, creates criminal offenses, and creates civil and administrative penalties.

“Hemp” is defined as the plant *Cannabis sativa* L. and any part of the plant, including seeds, derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers with a delta-9 tetrahydrocannabinol (THC) concentration of no more than 0.3 percent by dry weight. The bill specifies that hemp, as defined, is not a controlled substance or included in the definition of marijuana under state law.

**State plan.** HB 1325 requires the Texas Department of Agriculture (TDA), after consulting with the governor and the attorney general, to develop a state plan to monitor and regulate hemp production in Texas. This plan must comply with federal law and be approved by the secretary of the U.S. Department of Agriculture (USDA).

**Rules.** Under the bill, TDA must adopt rules prescribing sampling, inspection, and testing procedures to ensure that THC concentration in hemp plants cultivated in Texas does not exceed the legal limit. These rules must provide due process and an appeals process to protect license holders from the consequences of imperfect test results.

TDA, in consultation with the Department of Public Safety (DPS), also must adopt rules regulating the transportation of hemp to ensure that illegal cannabis is not transported into Texas disguised as legal hemp.

**State hemp accounts.** HB 1325 establishes the state hemp production account as an account in the general revenue fund administered by TDA. The account consists of appropriations; gifts, grants, or donations; fees received and penalties collected; and earned interest and investment income. Money in the account may be appropriated only to TDA for the administration and enforcement of state hemp laws.

The bill also establishes the hemp transportation account as a dedicated account in the general revenue fund. The account consists of civil penalties, earned interest, and investment income. Money in the account may be appropriated only for the administration and enforcement of laws governing the transportation of hemp.

**Fees.** TDA is required to set and collect certain fees, including licensing fees, participation fees for locations at which hemp will be grown, and collection and testing fees for tests performed by the department in order to determine the THC concentration of produced hemp.

**Licensing.** HB 1325 prohibits a person from cultivating or handling hemp in Texas or transporting hemp outside of the state unless the person holds a hemp grower’s license. Licenses are issued by TDA and are valid for one year. Applications for a hemp grower’s license must include a description of each location where the applicant intends to cultivate or handle hemp, written consent authorizing state and local law enforcement agencies and TDA to enter these locations to conduct inspections, an application fee, and any other information required by department rule. TDA must renew a license if an applicant submits a renewal fee, does not owe any outstanding fees, and is not ineligible to hold the license.

Individuals who have been convicted of a felony relating to a controlled substance are ineligible for a hemp grower’s license before the 10th anniversary of the conviction, and TDA must revoke the license of an individual convicted of a felony relating to a controlled substance.

**Testing and enforcement.** Under the bill, TDA may randomly inspect land where hemp is grown and collect and test plant samples. These inspections must be paid for using participation fees collected by the department. DPS also may inspect, collect samples from, or test plants from any portion of a plot to ensure compliance with the bill, and must be granted access to plots for these purposes. If either TDA or DPS determines any portion of a plot is not compliant with the bill, they may report the license holder to the other department or to the attorney general.

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Hemp producers are prohibited from harvesting hemp plants unless a sample of plants from the plot where the hemp is grown are first tested to determine the concentration of THC present in the plants. If the pre-harvest sample exceeds the THC level for hemp, TDA must allow the license holder to have a single post-harvest test performed on a second sample of plants.

Licensed producers must harvest hemp plants from a plot within 20 days after a pre-harvest sample is collected unless field conditions delay harvesting or TDA authorizes a delay. Producers may not sell or use the harvested plants before receiving the results of a test for the plants' THC concentration. If pre-harvest and, if applicable, post-harvest test results indicate that harvested plants have a THC concentration higher than the legal limit, the producer must dispose of or destroy all the plants represented by the tested sample or take other corrective actions.

Testing must be carried out by TDA, an institution of higher education, or a registered and accredited independent testing lab. It is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) for a person to forge, falsify, or alter the results of hemp lab test with the intent to deceive.

Peace officers may inspect and collect a reasonably sized sample of any material from the plant *Cannabis sativa L.* found in a vehicle to determine the sample's THC concentration. A peace officer may not seize the plant material or arrest the person transporting it without probable cause to believe the plant material is illegal cannabis.

**Shipping and transportation.** HB 1325 prohibits a person from transporting hemp in Texas unless the hemp is produced in compliance with statute and is accompanied by a shipping certificate, cargo manifest, or other required documentation. A person who violates these requirements is liable to the state for a civil penalty not to exceed \$500 per violation and commits a misdemeanor punishable by a fine of not more than \$1,000. A person commits a third-degree felony if the person forges, falsifies, or alters a shipping certificate or cargo manifest with the intent to deceive law enforcement.

**Seed certification.** An individual may not sell, offer for sale, distribute, or use hemp seed in Texas that has not been certified or approved by TDA or another authorized entity. A variety of hemp seed that produces plants with THC concentration in excess of the federal limit may not be certified or approved.

**Consumable hemp products.** A person may not process hemp or manufacture a consumable hemp product without a license. Individuals who have been convicted of a felony relating to a controlled substance are ineligible for a license to manufacture consumable hemp products before the 10th anniversary of the conviction, and TDA must revoke the license of an individual convicted of a felony relating to a controlled substance.

Hemp plants used in the manufacture of a consumable hemp product must be tested to confirm that they are within legal THC concentration limits, to determine the concentration of various cannabinoids, and to determine the presence of heavy metals, pesticides, harmful microorganisms, or other substances.

Consumable hemp products must be labeled with product and manufacturing information and a certification that the products' THC concentration is within legal limits. These hemp products may be transported across state lines and exported. Consumable hemp products from outside Texas may be sold in the state if they are manufactured in compliance with the relevant hemp plan or applicable laws.

**THC and CBD oils.** A person may not sell, offer for sale, possess, distribute, or transport a cannabinoid oil if the oil contains any material from *Cannabis sativa L.* not produced in compliance with federal hemp law and if the oil has not been tested to confirm a THC concentration within legal limits. Sellers of consumable hemp products containing cannabidiol must register with the Department of State Health Services. These requirements do not apply to low-THC cannabis regulated under the Texas Compassionate-Use Act.

**Non-consumable hemp products.** The bill permits a person to possess, transport, sell, or buy legally produced non-consumable hemp products in Texas. Such products produced outside of the state may be sold in Texas if they are not produced using illegally cultivated hemp and their sale does not violate federal law. Non-consumable hemp products legally may be transported across state lines and exported. A state agency may not authorize the manufacture of a hemp product for smoking.

## Supporters said

HB 1325 would support a state-regulated commercial hemp industry in Texas, providing new economic opportunities for agriculture and manufacturing. The bill would not legalize marijuana; rather, it would make Texas

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the primary regulatory authority over the cultivation of hemp and production of hemp products in the state.

The hemp industry has grown, and it should come to Texas where it could create jobs and generate revenue for the state. This opportunity was enabled by the passage of the federal Agriculture Improvement Act of 2018, which included the federal Hemp Farming Act that permitted the cultivation, processing, and possession of hemp. If Texas does not submit a state plan to USDA, the state will cede primary regulatory authority to USDA when its rules on hemp production are established.

Hemp can be used to manufacture a wide variety of industrial products, including fiber, clothing, construction materials, cosmetics, and automotive parts. It is also drought- and heat-resistant and is not water intensive, making it well suited to Texas. Under HB 1325, Texas farmers would have an opportunity to capitalize on a large emerging market for hemp and its commercial byproducts.

The bill would establish a regulatory regime necessary and appropriate to verify that hemp and hemp products were below the THC limit. The shipping certificate and labeling provisions of the bill would allow legal hemp and hemp products to be easily identified.

The bill would not legalize or decriminalize marijuana. Contrary to some criticism of the bill, prosecutors still would be empowered and obligated to enforce existing controlled substance laws. In many cases, a chemical test to determine THC levels would not be required to prosecute marijuana possession on circumstantial evidence, such as the appearance of a marijuana cigarette. In cases where testing is required, emerging technological developments soon will allow the state to quickly and cost-effectively determine the THC concentration of a sample.

The standards for probable cause also would not be undermined by the legalization of hemp because the appearance or smell of cannabis still would be reason to suspect a person of being in possession of marijuana.

## Critics said

HB 1325 could complicate the prosecution of low-level cannabis offenses. Under the bill, hemp products with a maximum THC concentration of 0.3 percent would be legal, which could increase the amount of testing of THC concentration that had to be completed by the DPS crime lab. An increased caseload due to greater availability of hemp products and the need to distinguish between legal

and illegal amounts of THC could require a significant number of new staff and expensive testing equipment.

In addition, hemp and marijuana are visually identical and smell the same when burned. Were HB 1325 to pass, the appearance or smell of cannabis no longer would be sufficient to establish probable cause that a person was in possession of marijuana. This could undermine the enforcement of existing controlled substance laws.

## Notes

The HRO analysis of HB 1325 appeared in Part Two of the April 23 *Daily Floor Report*.

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# Continuing Texas Alcoholic Beverage Commission

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## HB 1545 by Paddie

*Generally effective September 1, 2019*

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**HB 1545** continues the Texas Alcoholic Beverage Commission until September 1, 2031, and expands the commission from three to five members.

The bill revises conflicts-of-interest provisions that prohibit persons with certain financial interests in the alcoholic beverage industry from being appointed to the commission, holding an office under the commission, or being employed by the commission. HB 1545 redefines “financial interest” as having at least 5 percent cumulative interest in alcoholic beverage businesses. The previous definition had been having any financial connection with someone engaged in an alcoholic beverage business.

HB 1545 makes several other changes to the laws governing the agency, including revising:

- the types of licenses and permits issued by the commission, while reducing the total number;
- the process for approving, denying, and protesting license and permit applications;
- the agency’s enforcement and inspection processes; and
- the registration and labeling of products.

**Permits, licenses, and fees.** The bill reduces the number of licenses and permit types issued by TABC from 75 to 36, according to the Sunset Advisory Commission. It eliminates the distinction between beer and ale and combines the licensing, permitting, and regulations for the two types of beverages into one category. In most cases, the provisions relating to beer are applied to the new category. Other licenses and permits are combined and some are eliminated.

HB 1545 allows small brewers and manufacturers to sell malt beverages for consumption off of their premises, subject to certain limits. Sales of “beer-to-go” cannot exceed 288 fluid ounces, which is about one case, per day per consumer.

The bill raises the cap on the number of package store permits that a person may have from five to 250 and revises exceptions to the limit. TABC is prohibited from issuing more than 15 original package store permits to a person annually.

Under the bill, statutory fees and surcharges are eliminated, and TABC is authorized to establish fees for licenses, permits, and certificates by rule.

**Application approval, denial, and protest process.** HB 1545 restructures the agency’s process for approving, denying, and protesting license and permit applications and designates the roles of the commission, the agency administrator, and the State Office of Administrative Hearings (SOAH) in that process.

**Enforcement and inspections.** HB 1545 makes several changes to the agency’s enforcement and inspection process, including requiring the commission to develop a risk-based approach to inspections that prioritizes public safety. The agency’s inspection plan must prioritize high-risk permittees and licensees and must require physical inspections of all regulated locations within a reasonable time. The bill outlines the disciplinary authority of the commission and the administrator over those regulated by the commission and requires the commissioner to make final decisions on disciplinary actions in certain cases.

**Registration, labeling, and testing.** HB 1545 revises statutes governing product registration and label approval. The bill requires those wanting to register malt beverages to submit a federal certificate of label approval (COLA) with a registration application. It eliminates the current process involving prior TABC label approval for beer and ale.

The bill establishes a 30-day deadline for the commission to approve or deny product registrations and requires the commission to use rules to establish certain other procedures related to product registration. The commission may deny registration to a product with a federal COLA if it determines that the product would create a public safety concern, create a cross-tier violation, or violate the Alcoholic Beverage Code.

## Supporters said

The Texas Alcoholic Beverage Commission (TABC) should be continued for another 12 years because the state has an ongoing need for the commission’s services

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and its protection of public safety. No other entity has the specialized expertise to regulate the alcoholic beverage industry, and no other agency could perform all of the agency's tasks in licensing, law enforcement, and tax collection.

**Commission.** HB 1545 would increase the size of the Texas Alcoholic Beverage Commission from three to five members to enable commissioners to better engage in the commission's duties and make more informed decisions. The current three-member commission can be stretched thin trying to regulate such a large industry. HB 1545 also would update conflict-of-interest provisions so that a bigger pool of candidates would be eligible for the commission.

**Combined permits, licenses.** HB 1545 would revise TABC's licensing structure to remove overly complicated, duplicative, and unnecessary licenses that burden the agency and industry. The total number of types of alcoholic beverage licenses and permits would be reduced from 75 to 36 by removing layers of licenses, so that a primary license included the authority to conduct related activities, and by eliminating obsolete or duplicative licenses and permits.

The state's regulation of beer and ale in separate categories based solely on alcohol content is outdated, redundant, and unnecessary. HB 1545 would combine them into one "malt beverage" category, and in most cases, the regulations governing beer would be applied to the new category since beer represents the largest portion of the combined group.

The bill would allow customers to purchase beer-to-go from small breweries so that the growing craft beer industry could meet consumer demand and be on equal footing with craft breweries in other states, as well as with Texas wineries and distilleries, which may sell their products at their facilities. This change would support jobs and economic development without disrupting the state's three-tier system of alcohol regulation.

HB 1545 would eliminate a confusing and illogical system of statutory fees and agency surcharges and replace it with one that allows the agency to set fees by rule. The rulemaking process would allow input by stakeholders so fees would be set at appropriate levels.

**Application approval, denial, and protest process.** HB 1545 would revise TABC's process for approving and protesting licenses and permits to establish a more transparent and fair process consistent with practices at

other agencies. To improve accountability, the commission would be able to delegate approvals of applications but would be required to make final denials. The bill would support public input by clearly outlining the rights of the public and public officials in the protest process.

The bill also would be in line with other legislative decisions moving certain administrative hearings and decisions to SOAH. Using SOAH would promote consistency in decision-making and fair treatment for all parties.

**Enforcement and inspections.** The bill would better protect the public by authorizing a risk-based inspection system of licensees and permittees. The agency would have authority for temporary suspensions through emergency orders, which would allow it to quickly address threats to public welfare. The bill would give the commission additional tools for enforcement and would better deter violations by allowing the commission to consider the profit made from a violation when determining the amount of a civil penalty if the permittee or licensee had previously violated the code.

**Registration, labeling, and testing.** HB 1545 would revise the product registration and label approval process to eliminate duplication that can delay products getting to the market. The bill would create a fair system and would streamline the approval process for malt beverages by requiring TABC to accept products with federal label approval and by giving TABC a reasonable deadline for approval of product registrations. The agency would have authority to enforce current law and protect public safety through an exception to the approval requirement if it determined a product would create a public safety concern or a cross-tier or other law violation.

## Critics said

While the Texas Alcoholic Beverage Commission should be continued, HB 1545 would make several unnecessary and potentially harmful changes to the agency, including to its enforcement and protest processes.

**Commission.** TABC should not be expanded because doing so could dilute commissioners' sense of responsibility. Other state boards, including the Public Utility Commission and the Railroad Commission, function well with three commissioners.

In addition, changes to the conflict of interest provisions might be too lenient. A percentage of ownership

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threshold that was less than 5 percent might be better as an initial change.

**Permits, license, fees.** Rather than remove all fees from statute, HB 1545 should institute caps on fees to ensure a limit. With no statutory limit, the alcoholic beverage industry could face uncertainty about the cost of doing business and the prospect of ever-increasing fees.

Allowing sales of beer-to-go at breweries would chip away at the state's three-tier system of regulation that separates those who manufacture, distribute, and sell alcohol.

**Application approval, denial, and protest process.** HB 1545 should not remove local elected officials from the application protest process because this could reduce the ability of Texans affected by a decision to protest an application and would focus the process on the state government rather than the community. Instead of requiring certain hearings to be held by SOAH, the bill should require them to be conducted locally and should require appeals to go to local district courts rather than to the Travis County district court. This would help ensure local input and consideration by officials elected by those affected by the decision.

**Enforcement and inspections.** The agency already has several enforcement tools, and the bill could give too much power to the agency. For example, HB 1545 should not require TABC to consider the profits earned from a violation when assessing a civil penalty, even on a second offense. Penalties should be determined based on the harm to the public and the nature and seriousness of a violation.

**Registration, labeling, and testing.** The bill should include revisions to the labeling process that would institute a file-and-use system for labels so that once a label with federal approval was filed with TABC, the labeled product could be sold in the state. Although the bill requires the commission to approve products with federal labels, it also allows the commission up to 30 days to issue approval, which could delay products getting to market.

## Notes

The HRO analysis of HB 1545 appeared in Part One of the April 25 *Daily Floor Report*.

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# Modifying massage therapy licensing

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## HB 1865 by Landgraf

*Generally effective September 1, 2019*

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**HB 1865** modifies massage license eligibility. It requires submission of fingerprints by massage license applicants and a criminal history record information check. It also requires student permits and monthly progress reports and repeals the licensing exemption for certain massage therapy students.

**Criminal history record information check.** The bill requires applicants for a massage establishment, school, therapist, or therapy instructor license to undergo fingerprint background checks.

By September 1, 2021, the Texas Department of Licensing and Regulation (TDLR) will have to obtain criminal history record information on each person who holds a massage license but did not undergo a check upon initial application. TDLR could suspend the license of a license-holder who does not provide the required information for the criminal history record information check.

**Student permit.** A student enrolled in a massage school in Texas must hold a permit with the name of the student and the school. Permits must be displayed in a reasonable manner at massage schools. TDLR must issue student permits to applicants who submit an application and any required fee. The application will have to be submitted in a form and manner prescribed by TDLR and satisfy other requirements specified by the department. These provisions apply only to students enrolled in massage schools on or after June 1, 2020.

**Progress reports.** Massage schools must maintain a monthly progress report for each student that certifies the students' daily attendance records and number of credit hours earned in the previous month. Upon a student's completion of a prescribed course of instruction, massage schools must notify TDLR that the student has completed the required number of hours and is eligible to take the appropriate examination. These provisions take effect July 1, 2020.

**Repeal of student exemption.** The bill repeals the exemption from licensing requirements for students who provide massage therapy as part of an internship program

or without compensation and who are enrolled in a state-approved course of instruction of at least 500 hours.

**License ineligibility.** The bill repeals a provision barring individuals who are convicted of violating massage therapy statutes from receiving a license as a massage establishment, massage school, massage therapist, or massage therapy instructor until the fifth anniversary of the date of the conviction.

## Supporters said

HB 1865 would add another tool for the state to combat human trafficking by implementing the recommendations of the Texas Human Trafficking Prevention Task Force in its biennial report to the Legislature. According to TDLR, the massage industry is likely to have the second-highest incidence of human trafficking crimes. Currently, individuals who have pleaded guilty or no contest to or been convicted of a human trafficking, prostitution, or another sexual offense cannot receive a massage therapy license. The bill would enforce this existing prohibition and reduce human trafficking in the massage industry by requiring TDLR to conduct comprehensive criminal history record information checks on license applicants using fingerprints.

HB 1865 also would aid in the fight against human trafficking by requiring fingerprint criminal background checks on massage therapy license-holders who apply for license renewals and who may not have undergone the information checks required of new applicants. The bill also would allow TDLR to locate fraudulent massage schools and students by requiring legitimate massage schools to display student permits at the school and maintain monthly progress reports.

Removing the five-year "sit-out period" for massage licensees convicted of a violation of the massage therapy statutes would ensure that TDLR can make reasonable determinations about a licensee's criminal history and give the agency more discretion in handling these cases.



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## Critics said

HB 1865 would not aid in the fight against human trafficking, since requiring legitimate massage therapists to be fingerprinted would not stop potentially illicit massage parlors from operating. Massage parlors, which are defined in statute as business establishments intended to provide or facilitate sexual gratification to customers, should be the focus of the state's attention, not legitimate massage therapy operations.

## Notes

The HRO analysis of HB 1865 appeared in Part Three of the April 25 *Daily Floor Report*.

The 86th Legislature also enacted other bills related to human trafficking.

**SB 20** by Huffman, effective September 1, 2019, includes a variety of anti-human trafficking measures, such as new penalties relating to the promotion of prostitution, revised penalties for certain prostitution offenses, revised procedures for orders of nondisclosure for certain human trafficking victims, and requiring the Health and Human Services Commission to establish a program for child sex trafficking victims. The HRO analysis of SB 20 appeared in Part One of the May 21 *Daily Floor Report*.

**HB 2747** by Ortega, effective September 1, 2019, requires massage establishments and massage schools to clearly display a sign that shows services and assistance available to human trafficking victims and the toll-free telephone number of a referral hotline. It also prohibits a massage establishment from allowing any individual, including a student, license holder, or employee, to reside on its premises. The HRO analysis of HB 2747 appeared in Part Two of the April 29 *Daily Floor Report*.

**SB 498** by Huffman, which died in the House, would have terminated a tenant's right to possession of property if the tenant used or allowed the premises to be used for operating, maintaining, or advertising a non-compliant massage establishment. SB 498 was not analyzed in a *Daily Floor Report*.

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# Revising TWIA operations

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## SB 615 by Buckingham

*Effective September 1, 2019*

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**SB 615** makes changes to the operations and functions of the Texas Windstorm Insurance Association (TWIA).

The changes include:

- establishing a process for automatic renewal of policies and acceptance of certain payment methods;
- formally authorizing TWIA to provide supplemental payments;
- determining replacement cost on the effective date of a TWIA policy rather than at the time of property loss;
- transferring the issuance of certificates of compliance from TWIA to the Texas Department of Insurance (TDI);
- requiring certain disclosures; and
- making other changes consistent with across-the-board Sunset recommendations, including provisions for board member training, board membership, and complaints.

The bill requires the next Sunset review of TWIA to occur during the period in which agencies scheduled to be abolished in 2031 would be reviewed.

## Supporters said

SB 615 would make necessary changes to TWIA's operational efficiency and effectiveness, including improvements to customer payment options, clarity on availability of supplemental payments, and a more efficient replacement cost calculation.

SB 615 appropriately focuses on Sunset Advisory Commission recommendations to increase the effectiveness and efficiency of TWIA's operations, improve its customer service, decrease costs to policyholders, and help ensure it can respond more quickly to legislative changes. Policy decisions regarding TWIA's purpose, funding structure, and competing mandates are better left to other legislation.

**Customer service.** Offering automatic policy renewal would simplify the process for most renewals. Typically, no new information is necessary to continue coverage under the statutory requirements. The bill also would improve customer service by allowing installment premium payments, which would help customers who cannot pay the full annual premium upfront. Accepting credit card payments also makes premium payment easier for policyholders.

**Supplemental payments.** Authorizing TWIA to issue supplemental payments and requiring the commissioner of TDI to adopt rules for that process would align statute with current practice and create more clarity for policyholders.

**Replacement cost.** Establishing the replacement cost of a property on the effective date of a TWIA policy would simplify the claims process and provide both TWIA and policyholders with greater certainty regarding policy coverage.

**Certificates of compliance.** Transferring issuance of certificates of compliance to TDI would help ensure TWIA insured buildings were properly prepared for extreme weather conditions.

The transfer would provide better customer service to policyholders and comprehensive and consistent information about windstorm code compliance. TDI is well equipped to handle this oversight.

**Conflicts of interest.** The bill's requirement of disclosure of conflicts of interest would increase transparency for stakeholders and board members around the board decisions.

**Transfer of policies.** Changes to rules on the transfer of policies from TWIA to private insurers would reduce policyholder confusion and reduce the administrative burden on TWIA.

**Rulemaking authority.** Granting TWIA authority to formally propose rules to TDI would aid the timely implementation of statute and facilitate TWIA's continued process improvements.

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## Critics said

By granting the authority to issue certificates of compliance to the Texas Department of Insurance, SB 615 would put non-engineers in charge of approving engineering decisions. The practice of issuing or affirming certificates of compliance after a property has been constructed or renovated allows for jobs to be inspected and approved by an engineer, built, and then afterwards rejected. These reviews by non-engineers who lack sufficient expertise can be prone to abuse. Oversight of professional engineering decisions should be left to the Professional Board of Engineers.

It is not necessary to codify the Sunset Advisory Commission's standard recommendations on member training and conflict-of-interest disclosure because the practices already are standard operating procedure for TWIA. New board members receive live, on-site training as they are appointed, using training materials that cover the items included in the Sunset recommendation. TWIA has a rigorous ethics and conflict-of-interest policy and requires board members to make annual certifications and disclose relevant conflict information.

## Other critics said

SB 615 would not go far enough in addressing the central policy issues surrounding TWIA, including its funding structure and competing mandates. The Legislature's deferral on the issue of TWIA's contradiction in organizational purpose has resulted in increasing rates for policyholders and no meaningful transfer of policies from TWIA to private insurers.

TWIA's current funding structure primarily relies on premiums and debt repaid by future premiums. Assessments against members help to subsidize costs and cover claims in major storm years, but there is a liability cap on such assessments against the industry. Because TWIA's revenue from premiums is insufficient to pay future claims, TWIA would have to issue more debt secured by future premium revenues, necessitating further increases in policyholder rates.

At the same time, TWIA is supposed to be an insurer of last resort for coastal communities that cannot buy windstorm insurance on the private market. Because mortgages typically require windstorm insurance coverage of the mortgaged property, changes to TWIA's funding structure to allow for even greater flexibility raising premiums could make TWIA coverage too expensive

and could risk the long-term viability of certain coastal communities.

## Notes

The HRO analysis of SB 615 appeared in Part One of the May 16 *Daily Floor Report*.

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# Continuing plumbing regulation under TDLR; discontinuing TSBPE

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## SB 621 by Nichols

*Died in the House*

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**SB 621** would have discontinued the Texas State Board of Plumbing Examiners (TSBPE) after a wind-down period ending September 1, 2020. The obligations, property, rights, powers, and duties of TSBPE would have been transferred to the Texas Department of Licensing and Regulation (TDLR). The Texas Plumbing Advisory Board would have been created to provide relevant advice and recommendations to TDLR. The bill also would have made several changes to the licensing of plumbers, including creating the plumbing contractor license and removing the designation of responsible master plumber.

Because the bill failed to pass, the Texas State Board of Plumbing Examiners and the statutes regulating plumbing were set to be discontinued on September 1, 2019.

**Transfer of duties.** The bill would have required TSBPE and TDLR to consult with appropriate state entities to ensure the transfer of property and responsibilities from the state board to the department. All rules of TSBPE would have continued in effect as rules of TDLR, unless superseded by TDLR rule.

A license, endorsement, or certificate of registration issued by the state board would have continued in effect after the bill's effective date, as would have applications for such credentials pending on that date. Complaints, investigations, contested cases, and other pending proceedings also would have continued without change in status after the bill's effective date.

**Advisory board.** The bill would have created the Texas Plumbing Advisory Board to provide advice and recommendations to TDLR on technical matters relevant to the administration and enforcement of the plumbing code. Membership of the advisory board would have been similar to that of TSBPE, except that one board member would have to have been a plumbing contractor, rather than a responsible master plumber, and one of the two board members representing the public would have been replaced by a licensed plumber.

The governor would have had to appoint members to the advisory board by December 1, 2019. These members could have included current members of TSBPE.

**Licenses and designations.** SB 621 would have eliminated the responsible master plumber designation and replaced some of its functions with a plumbing contractor license.

Under the bill, a "plumbing contractor" would have been defined as a person licensed as a plumbing contractor who either was a master plumber or employed a master plumber. Plumbing contractors would have been authorized to obtain permits for plumbing work, would have assumed responsibility for plumbing work performed for compensation, and would have been required to submit a certificate of insurance to TDLR.

The bill would have prohibited a person from performing or offering to perform plumbing services for compensation unless that person:

- held a plumbing contractor license and the proper license, endorsement, or certificate of registration to perform or supervise plumbing work;
- was employed by a plumbing contractor and held the appropriate license or endorsement; or
- contracted with a plumbing contractor for the performance of the work.

Plumbing contractors would not have been required to provide continuous or uninterrupted on-the-job oversight of their employed or contracted plumbers' work.

An individual who was designated as a responsible master plumber on the bill's effective date would have been authorized to act as a responsible master plumber until September 1, 2020. After that date, a person would have had to hold a plumbing contractor license in order to perform or offer to perform plumbing work for compensation.

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The bill also would have eliminated the drain cleaner, drain cleaner-restricted registrant, and residential utilities installer designations. Responsibility for their functions would have been incorporated into the plumber's apprentice registration.

SB 621 would have required applicants for plumbing licenses as well as current license holders to submit fingerprints to TDLR or the Department of Public Safety by certain dates for the purpose of obtaining criminal history record information. TDLR would have been prohibited from issuing a license to a person who failed to comply with this requirement and could have suspended the licenses of individuals who did not comply with the department's informational requests.

**Rules.** Under SB 621, the Texas Commission of Licensing and Regulation (TCLR) would have had to establish rules on training and continuing education and requiring certain plumbing tasks to be directly supervised by a master plumber.

**Reciprocity.** SB 621 would have allowed TDLR to issue a license, endorsement, or certificate of registration to an applicant who held a similar set of credentials issued by another jurisdiction. TDLR would have been prohibited from requiring an applicant to undergo an examination if the applicant held such an equivalent license, endorsement, or certificate for at least two years.

**Training, examinations, and continuing education.** TDLR would have been required to facilitate the administration of exams required for plumbing licensure and to determine the minimum requirements and passing scores for such exams. If a required examination contained a practical component, TDLR would have had to employ or contract with one or more plumbing examiners to administer that portion of the exam.

SB 621 would have allowed TDLR to credit applicants who submitted an application for an exam for certain licenses with a number of hours against the required hours of work experience needed to take the exam if the applicant had successfully completed a coherent sequence of courses in the plumbing trade offered through a career and technology education program. TDLR would have been required to determine the number of hours that could be credited towards the work experience requirements and to develop the sequences of courses, which also would have had to be approved by the State Board of Education.

## Supporters said

SB 621 would improve the regulation of plumbing in Texas by transferring the functions of TSBPE to TDLR, the agency responsible for handling the licensing and regulatory oversight of a variety of professions and industries. The bill also would increase the efficiency of the plumbing licensure process by creating a plumbing contractor license and eliminating the burdensome responsible master plumber designation. SB 621 would address examination backlogs by allowing TDLR to contract with third parties to administer certain licensing exam components.

The Sunset Advisory Commission identified many concerns with TSBPE, including burdensome rulemaking and neglect of key regulatory functions. The transfer of plumbing regulation from TSBPE to TDLR, an agency that has proven effective at occupational regulation and licensing, would be an appropriate answer to these concerns and would improve plumbing oversight in the state. In addition, the bill would create the Texas Plumbing Advisory Board to provide advice and support to the department. The board's makeup would closely resemble that of TSBPE and could include TSBPE members. Its involvement in the department's regulatory process would ensure plumbing professionals continued to have a voice in the oversight of their industry.

SB 621 also would improve the plumbing licensure process by creating the plumbing contractor license to replace the responsible master plumber designation, which can be burdensome to obtain. The bill would not require plumbing contractors to have plumbing expertise but instead would allow them to retain a master plumber to supervise plumbing work. These regulations would replace current requirements that responsible master plumbers supervise all plumbing projects, which can result in work slowdowns and disruptions. The bill also would allow contractors to quickly hire qualified plumbers to work for a Texas-licensed master plumber during disaster recovery.

The bill would address the backlog of plumbing license exams by allowing TDLR to contract with third-party exam companies to develop and administer plumbing exams. This would increase the frequency and effectiveness of testing.

## Critics said

SB 621 would reduce the ability of plumbers in Texas to oversee their own profession by abolishing the TSBPE.

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In addition, the bill would fail to address the backlog in licensing examinations, one of the central issues related to plumbing oversight in the state, because it would not allow certain exams to be offered outside of Austin.

business if strict compliance would prevent, hinder, or delay necessary actions in coping with a disaster.

Plumbing is critical to public health and safety and should be regulated by experienced professionals who are knowledgeable in the field. Transferring oversight of plumbing from TSBPE to TDLR could result in the devaluation of plumbing expertise. Although the bill would create a separate Plumbing Advisory Board, this board would not have a final say in setting regulatory policy and would not be sufficient to ensure appropriate oversight of the profession. Giving additional regulatory duties to TDLR, which is already burdened with the regulation of many different professions and industries, could reduce the overall efficiency of the department.

Instead of abolishing the state board and reorganizing the plumbing licensing process, the Sunset bill for TSBPE should focus on solving specific issues with the current regulation of plumbers, particularly the backlog in plumbing examinations. This concern could be addressed by allowing the practical component of plumbing exams to be offered in more than one location, rather than administered exclusively in Austin.

## Other critics said

SB 621 unnecessarily would transfer another agency's responsibilities to TDLR. The bill should have extended the TSBPE's date of abolishment to September 1, 2022, providing an additional year for the transfer of duties and property to TDLR.

## Notes

The HRO analysis of SB 621 appeared in Part One of the May 14 *Daily Floor Report*.

On June 13, 2019, Gov. Greg Abbott issued Executive Order No. GA-06, which suspends Occupations Code sec. 1301.003 to delay abolishing the Texas State Board of Plumbing Examiners and the statutes governing plumbing until May 31, 2021. In the order, Gov. Abbott noted the need for a "qualified workforce of licensed plumbers" to respond to damage caused by Hurricane Harvey and invoked Government Code sec. 418.016(a), which allows the governor to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state

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# Establishing governor's office review of occupational licensing rules

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## SB 1995 by Birdwell

*Effective September 1, 2019*

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**SB 1995** requires the Office of the Governor to review certain rules proposed by state agencies that issue occupational licenses and that have governing boards controlled by persons who provide services that are regulated by the agencies. The governor must establish a division to conduct the review and appoint a director with experience in antitrust law and who holds a license to practice law in Texas. The director serves a two-year term and must be confirmed by the Senate.

State regulatory agencies covered by the bill must submit to the division for review any rule proposed or considered for re-adoption that would affect market competition of licensed businesses, occupations, or professions. A rule is considered to affect market competition if it would create a barrier to market participation or result in higher prices or reduced competition for a product or service provided by the license holder.

The division must complete a thorough, independent review to determine if a proposed rule's effect on market competition is consistent with state policy as established by the agency's governing statute and whether the proposed rule promotes a clearly articulated and affirmatively expressed policy established by the Legislature to displace competition with government action. The division could initiate a review of a proposed rule that was not submitted for review if the division had reason to believe the rule could have an anticompetitive market effect.

When conducting a review of a proposed rule or deciding whether to initiate a review, the division may consider only evidence or communications submitted in writing from an identified person or entity and made available to the public, submitted in a public hearing, or generally known to the public. The division may request information from the agency, require the agency to analyze the possible implications of the rule, solicit public comments, or hold public hearings.

The division must complete its review no later than 90 days after an agency submits the proposed rule. After review, the division must approve the rule or reject it and

return it to the state agency with instructions for revising the rule to be consistent with applicable state policy. A state agency may not finally adopt or implement a proposed rule unless the division has approved it.

## Supporters said

SB 1995 would establish a mechanism for oversight of potentially anticompetitive actions by state regulatory boards, which would mitigate concerns about liability that the state could face under federal antitrust law.

The U.S. Supreme Court in its 2015 decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, created an exception to state immunity from antitrust lawsuits when state licensing boards undertake anticompetitive actions. The court articulated that for a state to enjoy immunity from antitrust suits, it must articulate a clear state policy to justify an anticompetitive action and provide active supervision of the agency undertaking the action.

SB 1995 would enable the state to undertake this active control of potentially anticompetitive actions by creating a division in the Office of the Governor to review rules proposed by state licensing boards to ensure there was a legitimate state purpose for each rule. The bill would not concentrate too much power in the hands of the governor because dissatisfied parties would still have recourse to judicial appeal if a proposed rule was rejected and the Legislature would retain the authority to modify the policies governing licensing boards and commissions.

## Critics said

SB 1995 would concentrate too much power in the Office of the Governor by giving it final say over a substantial amount of agency rulemaking. Although the bill aims to address a legitimate concern, this same concern could be addressed instead by altering the composition of the boards and commissions so that fewer members were industry practitioners.

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## Notes

The HRO analysis of SB 1995 appeared in Part Four of the May 21 *Daily Floor Report*.



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# Civil Jurisprudence and Judiciary

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\*Finally approved

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# Enforcing rights of child born alive after abortion

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## HB 16 by Leach

*Effective September 1, 2019*

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**HB 16** establishes a physician-patient relationship between a child born alive after an abortion and the physician who performed or attempted the abortion. A physician must exercise the same degree of professional skill, care, and diligence to preserve the child's life and health as the physician would render to any other child born alive at the same gestational age. "Professional skill, care, and diligence" requires the physician who performed or attempted the abortion to ensure that the child born alive is immediately transferred to a hospital.

A physician who fails to provide the appropriate medical treatment to a child born alive after an abortion or an attempted abortion commits a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000). A physician who fails to provide the appropriate medical treatment also is liable to the state for a civil penalty of at least \$100,000.

The attorney general may bring a suit to collect the civil penalty and recover reasonable attorney's fees. The bill does not create any liability for the woman on whom the abortion or attempted abortion is performed.

A person with knowledge of a failure to comply with the bill's provisions must report the noncompliance to the attorney general. The identity and personally identifiable information of the person reporting the noncompliance is exempt from the state's Public Information Act.

## Supporters said

HB 16 would strengthen protections afforded to newborns who survived an abortion by creating a doctor-patient relationship between the physician and surviving infant upon birth. Establishing the doctor-patient relationship at birth would ensure children who survived abortions received lifesaving care that every child deserves.

The bill is necessary to ensure physicians are held accountable if they fail to provide the appropriate level of medical care to newborns born alive after an attempted abortion. The bill would create needed enforcement mechanisms against physicians to ensure doctors provide care in these rare circumstances.

The state has a continuing need to protect human dignity and the rights of unborn children and abortion survivors. The bill would ensure women seeking abortions are shielded from liability.

## Critics said

HB 16 is unnecessary because current law already provides children born alive after an abortion with the same rights as any other child. The Texas Medical Board already has procedures in place to investigate a physician's misconduct. In recent years, state records show that it is extremely rare for infants to be born after abortion procedures.

HB 16 also would interfere in the doctor-patient relationship by requiring physicians to transfer an infant to a hospital. Decision-making regarding medical care should be left up to the physician, not the state. This bill would further intimidate physicians who perform abortions by imposing severe penalties.

## Notes

The HRO analysis of HB 16 appeared in Part Four of the April 16 *Daily Floor Report*.

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# Modifying judicial pay and retirement systems

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## HB 2384 by Leach

*Effective September 1, 2019*

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**HB 2384** increases the annual base salary for district court judges, provides for periodic pay increases for certain state judges and justices based on their years of service, and makes changes to the retirement systems for certain judges, justices, and prosecutors.

**Judicial salaries.** The bill increases the minimum annual base salary for district court judges from \$125,000 to \$140,000.

HB 2384 also increases the state annual salary of district court judges and judges and justices of courts of appeals, the Supreme Court, and the Court of Criminal Appeals every four years for the first eight years of judicial service. The bill sets the state annual salary of such judges or justices at 110 percent of the district judge base salary after four years and at 120 percent of the district judge base salary after eight years. Judges of statutory county courts and statutory probate courts will receive similar periodic salary increases based on years of service.

Under the bill, child support and child protection court associate judges must receive salaries equal to 90 percent of the state base salary of district judges without regard to periodic increases based on years of service. Presiding judges of administrative judicial regions no longer have discretion in determining the salaries of these associate judges. HB 2384 also adjusts the salaries of district attorneys, criminal district attorneys, county and state prosecutors, and state prosecuting attorneys to a percentage of the annual salary for a district judge with comparable years of experience.

County judges whose functions are at least 40 percent judicial in nature are entitled to receive annual salary supplements from the state equal to 18 percent of the state base salary paid to district judges, without taking into account periodic salary increases for years of service.

**Longevity pay.** The bill increases from 3.1 percent to 5 percent of their current salary the monthly longevity pay to which active judges and justices who receive a salary from the state and are members of the Judicial Retirement System of Texas Plan One or Plan Two are entitled. Monthly longevity pay becomes payable to these judges and justices after 12, rather than 16, years of service.

**Maximum salaries.** The bill sets the maximum annual salary of statutory county and statutory probate court judges at \$1,000 less than the maximum combined annual salary from all state and county sources paid to a district judge entitled to 120 percent of the state base salary and any longevity pay.

If a state prosecutor's total annual salary exceeds the maximum combined base salary from all state and county sources for a district judge with comparable years of service, the comptroller must reduce the prosecutor's salary by the excess amount.

**State contributions to counties.** For each statutory county court judge, the state must contribute 60 percent of the state base salary paid to a district judge. The state contribution to the administrative county of a multicounty statutory county court for the salary of the court's judge is equal to the base salary paid to a district judge.

**Judicial Retirement System of Texas Plan One.** HB 2384 establishes that the service retirement annuity for a member of the Judicial Retirement System of Texas Plan One who retires before September 1, 2019, is equal to a percentage of the state base salary paid to a judge of a court of the same classification as the court on which the retiree last served.

The service retirement annuity for members who retire on or after September 1, 2019, is equal to a percentage of the state salary paid to a judge of a court of the same classification of the court on which the retiree last served before retirement, accounting for pay increases based on years of service.

Under the bill, a member of the retirement system who has accrued 20 years of service credit and elects to make contributions for each subsequent year of service credit will contribute to the system at a rate of 9.5 percent of the member's state compensation for each payroll period.

Disability retirement benefits are no longer provided under Plan One.

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### **Judicial Retirement System of Texas Plan Two.**

HB 2384 adjusts the standard service retirement annuity for members of the Judicial Retirement System of Texas Plan Two who retire on or after September 1, 2019, to reflect periodic salary increases related to years of service. The salary earned by visiting judges cannot be used to determine service retirement annuities.

The contribution rate for each payroll period is 9.5 percent of a member's compensation for service rendered after September 1, 2019.

Under HB 2384, members of Plan Two may apply for disability retirement annuities by filing an application for retirement with the board of trustees or having an application filed with the board by the member's spouse, employer, or legal representative.

Retirees who receive disability retirement annuities must undergo medical examinations each year for the first five years after retiring and once every three years after that. Members eligible for service retirement annuities or who are current judicial officeholders are not eligible to receive disability retirement annuities.

**Employees Retirement System of Texas.** The standard service retirement annuity for members of the elected class, including legislators, is tied to the state base salary for district judges. The standard service retirement annuity for service credited for a member of ERS who is a district or criminal district attorney retiring on or after September 1, 2019, is equal to the member's years of service credit multiplied by 2.3 percent of the state salary paid to district judges with the same number of years of contributing service credit. In computing service retirement annuities for district or criminal district attorneys, the longevity pay for district judges is excluded.

### **Supporters said**

HB 2384 would help Texas attract and retain qualified and experienced judges by providing them with periodic pay increases, including longevity pay increases after four and eight years of service. Texas' judicial salaries currently rank in the bottom half of the nation, and an outdated compensation framework makes it difficult to keep judges on the bench and adequately reward them for their critical public service to the state. Tying salary increases to longevity would help keep judicial compensation in Texas competitive with the private sector, better enabling the state to retain experienced judges and attract qualified new judges to the bench. By tying retirement annuities for

elected officials to the base salary of district judges, the bill would ensure that judicial salaries, not pensions for retired legislators, would be increased.

The bill would not create an unfair or discriminatory system of compensation by paying judges more based on longevity, but rather would ensure that judges received pay increases automatically instead of having to rely on the Legislature's actions in a given session.

### **Critics said**

HB 2384 would implement an arbitrary judicial compensation system based on longevity that paid different salaries to judges elected to perform the same job. This also could be perceived as devaluing the experience individuals bring to the bench from their previous careers.

### **Notes**

The HRO analysis of HB 2384 appeared in Part One of the April 29 *Daily Floor Report*.

**HB 1** by Zerwas, the general appropriations act, appropriates \$34 million for judicial compensation based on a tiered and longevity-based structure for certain positions.

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# Revising the Texas Citizens Participation Act

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## HB 2730 by Leach

*Effective September 1, 2019*

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**HB 2730** adds to the types of legal actions exempted from the Texas Citizens Participation Act (TCPA), which requires expedited dismissal of certain legal actions that are based on, relate to, or respond to the party's exercise of the right of free speech, petition, or association. The bill adjusts definitions related to the TCPA and provisions on motions to dismiss legal actions under the statute.

**Exemptions.** The bill exempts certain legal actions from the TCPA's requirements for early dismissal of certain lawsuits involving the exercise of free expression and association. These include:

- a legal action arising from an officer-director, employee-employer, or independent contractor relationship that seeks recovery for misappropriation of trade secrets or corporate opportunities or that seeks to enforce a non-disparagement agreement or a covenant not to compete;
- a legal action filed under Family Code provisions related to marriage, divorce, and child custody or an application for certain protective orders;
- a legal action brought under Business and Commerce Code ch. 17 provisions on deceptive trade practices, other than certain advertisements;
- a legal action in which a moving party raises a defense as a member of a medical committee;
- an eviction suit brought under Property Code ch. 24;
- a disciplinary action or disciplinary proceeding brought by the State Bar;
- a legal action brought under Government Code ch. 554 protections for reporting violations of open government laws; and
- a legal action based on a common law fraud claim.

**Covered actions.** The bill specifies that the TCPA applies to:

- certain legal actions related to the gathering and processing of information for communication to the public of a dramatic, literary, musical, political, journalistic, or artistic work, including a movie, television or radio program, or published article;

- a legal action related to communication of consumer opinions or commentary, evaluations of consumer complaints, or business reviews and ratings; and
- a legal action based on or in response to a public or private communication against a victim or alleged victim of family violence or dating violence, unlawful restraint, smuggling of persons, trafficking of persons, and certain sexual and assaultive offenses.

**Definitions.** HB 2730 redefines "exercise of the right of association" to apply only to those joining together to express or defend common interests that relate to a governmental proceeding or a matter of public concern. It defines "matter of public concern" to mean a statement or activity regarding a public official, public figure, or other person who has drawn substantial public attention; a matter of political, social, or other interest to the community; or a subject of concern to the public.

The bill specifies that "legal action" excludes alternative dispute resolution proceedings; post-judgment enforcement actions; and motions that do not amend or add a claim for legal, equitable, or declaratory relief.

**Motion to dismiss.** Under the bill, a party moving to dismiss a legal action under the TCPA must demonstrate, rather than show by a preponderance of the evidence, that the legal action is based on free speech grounds or specific activities listed in the bill. In determining whether a legal action is subject to the TCPA's dismissal requirements, a court must consider evidence a court could consider under a motion for summary judgment.

Parties to a legal action may agree to extend from 60 days the time to file a motion to dismiss. The bill specifies certain timelines for written notice of a hearing on a motion to dismiss and for filing a response.

Neither the court's ruling on the motion to dismiss nor the fact that it made such a ruling would be admissible in evidence at any later stage of the case, and no burden of proof or degree of proof otherwise applicable would be affected by the ruling.

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The bill allows, rather than requires, a court to award to the moving party sanctions against the party who brought the legal action in an amount the court determines sufficient to deter the party from bringing similar actions.

Under the bill, if a court orders dismissal of a compulsory counterclaim to a legal action under the TCPA, it may award to the moving party reasonable attorney's fees incurred in defending against the counterclaim if the court finds it frivolous or solely intended for delay.

## Supporters said

HB 2730 would provide needed reforms to the TCPA to curtail abuses and ensure the law was used as intended. The TCPA was established to protect Texans in the exercise of their constitutionally protected speech, petition, and association rights. It was enacted in 2011 to allow judges to assess whether a lawsuit was being pursued largely to silence critics. It allowed judges to quickly dismiss the types of cases commonly referred to as a Strategic Lawsuit against Public Participation, or SLAPP.

Since that time, however, the broadly worded anti-SLAPP law has been used to put an early end to legitimate lawsuits in which core constitutional rights have not been invaded, including cases involving trade secrets, employment non-compete agreements, and lawyer disciplinary actions. The law also has impacted the workloads of certain Texas appellate courts with numerous appeals. The bill would help alleviate these problems by exempting from the law certain types of lawsuits that are unlikely to involve free speech rights. While some have criticized these exemptions, other legal remedies are available for those who believe they have suffered a wrong in these areas.

HB 2730 would use a widely accepted standard from the U.S. Supreme Court to appropriately define when a communication was protected speech. This standard would guide courts on how to apply the protections of the TCPA.

The inclusion of a filing framework timeline consistent with Texas rules on other dispositive motions would provide clarity, flexibility, and control.

## Critics said

HB 2730 would make unnecessary changes to a law that has been effective in protecting average Texans' free speech rights from being silenced by powerful and wealthy interests. The exemption of numerous categories of lawsuits from the TCPA could weaken the ability of persons to raise a free speech defense in certain types of civil litigation. This could allow parties to allege trade secret or non-compete violations to silence critics or whistleblowers. For instance, a person evicted after complaining about a housing situation might not be able to have a court determine whether the eviction was connected to the person's exercise of free speech rights.

Changes to provisions on attorney's fees incurred in moving for dismissal of a lawsuit under the TCPA could make it harder for those represented by a lawyer working pro bono or on a contingency fee basis to be awarded fees.

Criticism that the TCPA has burdened Texas appellate courts is overblown, as such appeals make up a tiny fraction of all appeals filed.

## Other critics said

HB 2730 would not go far enough in reining in the excessive use of the anti-SLAPP law to dismiss valid legal claims. Earlier versions of the bill appropriately would have used a narrower definition of what constituted a matter of public concern.

## Notes

The HRO analysis of HB 2730 appeared in Part One of the April 29 *Daily Floor Report*.

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# Criminal Justice and Public Safety

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# Funding for border security

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## HB 1 by Zerwas

*Effective September 1, 2019*

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**HB 1**, the general appropriations act, appropriated \$800.6 million in all funds for border security operations in fiscal 2020-21. The bill appropriated \$693.3 million to the Department of Public Safety and the rest to eight other state agencies, as follows:

- \$53.5 million to the Trusteed Programs within the Office of the Governor, including funds for border prosecution grants, technology for the National Incident Based Reporting System, installing and maintaining border cameras, and anti-gang activities;
- \$29 million to the Texas Parks and Wildlife Department for game warden operations;
- \$10.4 million to the Department of Motor Vehicles for automobile burglary and theft prevention;
- \$6.9 million to the Texas Alcoholic Beverage Commission for border security and investigations;
- \$3 million to the Texas Soil and Water Conservation Board for Carrizo Cane eradication;
- \$2.6 million to the Office of the Attorney General for border prosecutions;
- \$1.6 million to the Texas Department of Criminal Justice for anti-gang activities; and
- \$300,000 to the Texas Commission on Law Enforcement to assist in border investigations.

## Supporters said

The border security funding in HB 1 would continue the state's successful efforts to make Texas safer by securing its international border. The budget supports the bulk of the border security items funded in fiscal 2018-19, while eliminating one-time and transitional expenditures from the previous biennium. About \$671.1 million for DPS would be base funding for the agency's border operations, including maintaining the 500 state troopers for the border added since 2016. HB 1 also would continue the funding provided by the 85th Legislature for a 50-hour work week for commissioned officers, which is a cost-effective way to increase law enforcement efforts. Other funds in HB 1 would help train local law enforcement agencies on transitioning to using the National Incident

Based Reporting System. Texas' efforts to fight border-related crime have been successful, and now is not the time for the state to significantly change direction on border funding.

## Critics said

Texas should be cautious about continuing the high level of spending on border security when the state has other priorities that need additional funding, such as pre-kindergarten and health care. Much of the state's border security spending should be borne by the federal government.

## Notes

The HRO analysis of the border security spending in HB 1 appeared in the HRO State Finance report 86-2, *CSHB 1: The House Appropriations Committee's Proposed Budget for Fiscal 2020-21*, March 2019.



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# Revising timelines for analyzing sexual assault kits, auditing untested kits

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## HB 8 by Neave

*Effective September 1, 2019*

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**HB 8**, the Lavinia Masters Act, revises procedures for handling and analyzing sexual assault exam kits, requires an audit and deadlines for the analysis of untested kits, amends preservation guidelines in certain circumstances, extends the statute of limitations for certain sexual assault offenses, and requires the establishment of a statewide telehealth center for sexual assault forensic medical exams.

The bill applies provisions of the Sexual Assault Prevention and Crisis Services Act (Government Code ch. 420) related to the analysis of sexual assault evidence to a sex offense other than sexual assault. "Sex offense" is defined as an offense under Penal Code ch. 21 for which biological evidence is collected.

**Release of sexual offense evidence to authorized persons.** If an entity that performs a medical exam to collect evidence of sexual assault or other sex offense receives written consent by or on behalf of the survivor to release the evidence, the entity must notify law enforcement agencies investigating the alleged offense. Agencies receiving notice must take possession of the evidence within seven days, except that an agency that receives notice from a facility more than 100 miles away has 14 days.

Failure to comply with evidence collection procedures or requirements does not affect the admissibility of the evidence in a trial.

**Analysis of sexual assault evidence.** A public accredited crime lab must complete its analysis of evidence of a sexual assault or other sex offense within 90 days of receiving the evidence. In a criminal case in which evidence of a sexual assault or other sex offense is collected and the number of offenders is uncertain or unknown, the lab must analyze any evidence necessary to identify the offender or offenders.

The Department of Public Safety (DPS) must compare the DNA profile obtained from evidence in a sexual assault kit with profiles in state and federal DNA databases, including CODIS, within 30 days of crime lab analysis. If the kit is analyzed by a public accredited

crime lab, the lab rather than DPS may perform the DNA comparison under certain circumstances.

Failure to comply with requirements for the analysis of sex offense evidence may be used to determine a law enforcement agency's or crime lab's eligibility for receiving grants from DPS, the Office of the Governor, or another state agency.

**Report of unanalyzed sexual assault kits.** Each law enforcement agency and public accredited crime lab must submit a quarterly report to DPS identifying the number of sexual assault exam kits the agency has not yet submitted for analysis or which a crime lab has not yet analyzed.

**Audit of unanalyzed sexual assault kits.** A law enforcement agency in possession of an unanalyzed sexual assault kit collected on or before September 1, 2019, must:

- submit to DPS by December 15, 2019, a list of the agency's active criminal cases for which an eligible kit has not yet been analyzed;
- submit to DPS or a public accredited crime lab by January 15, 2020, all untested kits pertaining to those cases; and
- if the kit was not submitted to a DPS laboratory, notify DPS of the lab where it was sent along with the date of and any analysis completed by the lab.

By September 1, 2020, DPS must submit to the governor and certain legislative committees a report containing a timeline for the completion of lab analyses of all unanalyzed sexual assault kits submitted by law enforcement agencies, a request for any necessary funding, and a proposal for determining which kits should be outsourced, if necessary.

DPS must analyze or contract for the analysis of and complete required DNA database comparisons for all untested kits pertaining to active criminal cases by September 1, 2022.

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**Preservation of sexual assault kits.** HB 8 extends the required preservation period for evidence collected in a sexual assault exam of a victim who has not reported the assault to law enforcement to the earlier of either five years after the evidence was collected or after consent to release the evidence was obtained. A crime lab may destroy the evidence after the preservation period only if it notifies the victim of the decision to destroy the evidence and a written objection is not received from the victim within 90 days.

A sexual assault exam kit collected during an investigation or prosecution of a felony must be retained and preserved for at least 40 years or until any applicable statute of limitations expires, whichever is longer. This requirement applies regardless of whether a person is apprehended for or charged with the offense.

**Statute of limitations.** The bill expands the circumstances under which the offense of sexual assault has no statute of limitation to include all offenses of sexual assault for which biological matter is collected, regardless of whether it is subjected to DNA testing.

**Information form for survivors of sexual assault.** The Department of State Health Services (DSHS) must include in a form for survivors a statement that public agencies are responsible for paying for the forensic portion of the exam and for the evidence collection kit. The form also must include information about reimbursing the survivor for the medical portion of the exam. Health care facilities must ensure that this information is orally communicated to the survivor.

DSHS must develop a form to be given to a survivor who has not given consent to release the evidence by the health care facility providing care to the survivor. The form must include certain information, such as DPS's policy on storage of sexual assault kits and a statement that the survivor may request the release of the evidence to a law enforcement agency and report a sex offense at any time.

**Statewide sexual assault telehealth center.** The attorney general must establish the Statewide Telehealth Center for Sexual Assault Forensic Medical Examination to expand access to sexual assault nurse examiners for underserved populations. The center may facilitate in person or through telecommunications the provision by a sexual assault nurse examiner of technical assistance, consultation services, or guidance to a sexual assault examiner. With permission from the facility where a forensic medical exam is conducted, the center may facilitate the use of telehealth services during the exam.

## Supporters said

HB 8 would take a valuable step toward bringing justice to survivors of sexual assault in Texas by addressing the backlog of untested sexual assault kits. Concerns have been raised that evidence from these kits may no longer be admissible in court, potentially denying justice to victims and compromising public safety. The state owes it to survivors to have evidence tested in a timely manner and to provide authorities with the tools to prosecute these crimes. This bill would help end the rape kit backlog, assure victims that cases will be treated with urgency and dignity, improve transparency and accountability, and renew confidence in the system.

## Critics said

No concerns identified.

## Notes

The HRO digest of HB 8 appeared in Part One of the April 16 *Daily Floor Report*.

**HB 1** by Zerwas, the general appropriations act, appropriated \$51.6 million in general revenue for fiscal 2020-21 for DPS to increase crime lab capacity and to prioritize the testing of backlogged sexual assault kits.

The 86th Legislature also considered other bills related to sexual assault evidence collection and preservation.

**HB 531** by Miller, effective September 1, 2019, prohibits hospitals from destroying medical records from forensic medical exams of sexual assault victims until 20 years after the records were created. The HRO digest of HB 531 appeared in Part One of the April 16 *Daily Floor Report*.

**HB 616** by Neave, effective September 1, 2019, establishes a process for health care facilities, sexual assault examiners, and sexual assault nurse examiners to apply directly to the attorney general for reimbursement for costs associated with the forensic medical exam of a victim of an alleged sexual assault. The bill also extends the period during which a sexual assault offense must be reported or during which a victim must arrive at a health care facility to be entitled to a forensic medical exam from within 96 hours of the offense to within 120 hours. The HRO digest of HB 616 appeared in Part One of the April 16 *Daily Floor Report*.

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**HB 1590** by Howard, effective June 4, 2019; establishes the Sexual Assault Survivors' Task Force in the Office of the Governor's Criminal Justice Division. Among its duties, the task force must make recommendations on the collection, preservation, tracking, analysis, and destruction of evidence to the attorney general and other entities. The HRO digest of HB 1590 appeared in the May 2 *Daily Floor Report*.

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# Reducing penalty for possessing 1 oz. of marijuana

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## HB 63 by Moody

*Died in the Senate*

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HB 63 would have reduced the penalty for possession of one ounce or less of marijuana from a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) to a class C misdemeanor (maximum \$500 fine). Peace officers would have been prohibited from arresting persons being charged solely with class C misdemeanor possession of marijuana and/or certain drug paraphernalia.

Courts would have been required to defer proceedings for class C misdemeanor marijuana or drug paraphernalia possession without entering an adjudication of guilt and to place individuals on probation unless the defendant had a previous deferral within the previous 12 months. The bill would have required courts to order the expunction of the criminal records of persons charged with these offenses if certain criteria were met, including if a complaint was dismissed or a person was acquitted. The bill also would have eliminated automatic driver's license suspensions for possession of one ounce or less of marijuana.

### Supporters said

HB 63 would reduce the penalty associated with possession of small amounts of marijuana to better reflect the seriousness of the offense and to allow state and local governments to use criminal justice resources more efficiently and effectively. Current law establishing a class B misdemeanor for possessing even very small amounts of marijuana overcriminalizes a nonviolent offense that carries no serious health or public safety risk. This level of criminalization can result in negative consequences out of proportion to the offense, including a criminal record that can be a barrier to employment, housing, education, military service, and more and that can lead to the revocation of driver's licenses.

The cost for local governments to enforce current laws on low-level possession, including time and resources spent arresting, prosecuting, and locking up those charged and sometimes providing lawyers at taxpayer expense, also is out of proportion to the offense and has proven ineffective in deterring drug use. HB 63 would reduce costs by allowing police officers to issue class C misdemeanor tickets in the lowest-level possession cases and to have

individuals show up later at court, freeing up resources to address more serious crimes.

HB 63 would not reduce public safety or encourage drug use, nor would it contribute to a "gateway" effect of leading individuals to harder drugs. Possession of even the smallest amounts of marijuana would remain a criminal offense, and it still would be illegal to traffic drugs and to drive while under the influence. Current punishments would remain for possession of larger amounts and for selling marijuana. Investigations into other crimes and drug or other searches would be unaffected by the bill.

HB 63 would not legalize marijuana in Texas, authorize medical marijuana, or promote marijuana. The bill would be in line with the support Texans show for reduced penalties for possessing small amounts of marijuana. A statewide law is needed for consistent enforcement rather than a patchwork of local policies.

### Critics said

Marijuana is a potentially harmful drug and possessing even small amounts should continue to be treated as such under current law. Current law making possession of up to two ounces a class B misdemeanor provides a range of punishments and options for handling low-level possession cases, including probation, pre-trial diversion, and deferred adjudication. Some jurisdictions use current law to issue a citation and a summons to appear in court. In some cases, jail sentences could be appropriate and could motivate addicts to enter treatment or to stop abusing drugs.

Concerns about the costs of enforcing laws on marijuana possession should not override the need to handle these offenses appropriately. Communities concerned about the cost to enforce current law could explore options such as cite-and-summons law. Marijuana continues to be a public safety concern, and lowering penalties could result in increased use that could raise public safety issues. Related crimes, such as impaired driving, robbery, burglary, and drug dealing could increase.

HB 63 would send the wrong message, and could encourage drug use and be a pathway for eventual

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legalization. Expanded drug use could exacerbate public health problems and be especially harmful to youth for whom marijuana could serve as a gateway to using other drugs.

## **Other critics said**

HB 63 should revise punishments for low-level marijuana possession to make the penalty a civil rather than criminal matter. This would be more in line with the seriousness of the offense and would keep low-level possession cases out of the criminal courts, where the consequences and costs to enforce the law are out of proportion to the offense.

## **Notes**

The HRO analysis of HB 63 appeared in Part Three of the April 25 *Daily Floor Report*.

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# Suspending certain handgun laws during a disaster

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## HB 1177 by Phelan

*Effective September 1, 2019*

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HB 1177 revises the application of certain handgun laws during a declared state of disaster.

Under the bill, the offense of unlawfully carrying a weapon established under Penal Code sec. 46.02 does not apply to a person carrying a handgun if:

- the person carries the handgun while evacuating from an area following the declaration of a state of disaster or a local state of disaster or while reentering that area after evacuating;
- not more than 168 hours have elapsed since the state of disaster or local state of disaster was declared or more than 168 hours have elapsed since the declaration and the governor has extended the period during which a person may carry a handgun; and
- the person is not prohibited by state or federal law from possessing a firearm.

Penal Code sec. 46.02 and certain provisions of sec. 46.03, which makes it an offense to possess a firearm on certain prohibited premises, and sec. 46.035, which creates the offense of unlawful carrying of a handgun by a license holder, do not apply to a person who carries a handgun if:

- the person carries the handgun on an otherwise prohibited premises that is operating as an emergency shelter during a declared state of disaster or local state of disaster;
- the person is authorized to carry the handgun by the owner or operator of the premises and complies with any rules and regulations of the owner or operator governing the carrying of a handgun on the premises; and
- the person is not prohibited by state or federal law from possessing a firearm.

### Supporters said

HB 1177 would provide clarity for lawful gun owners evacuating during a state of disaster by permitting them to carry handguns openly or concealed without a license to carry, as long as they are legally allowed to own a firearm.

Current law does not address individuals who evacuate with legally owned handguns by means other than their personal vehicles or to an emergency shelter. Texans should have the ability to take certain firearms with them while evacuating during a state of disaster without fear of breaking the law or being forced to leave handguns behind in unsecured vehicles or homes, where they could be at risk from looters.

Because the bill would allow shelter operators to decide whether to allow citizens to bring their handguns into the premises or not, property owners' rights would be protected. The bill would not set specific requirements for shelter operators but instead would provide them with the flexibility to set their own conditions for safe gun storage and to inform the local community in a way that best fits its needs.

### Critics said

HB 1177 would place an additional burden on law enforcement, first responders, and shelter operators during an already stressful period of disaster response. The bill would allow a person to carry a handgun openly or concealed into an otherwise prohibited place if it was operating as a shelter following a disaster, a time when evacuees would be experiencing emotional distress. This could present a public safety concern.

Because HB 1177 would not establish a standardized way for shelter operators to notify evacuees of whether or not handguns were authorized on the premises and of any requirements for safe gun storage, the bill would inappropriately give individuals the discretion to set aside existing law without clear rules or guidelines.

### Other critics said

HB 1177 should be in effect for the entire time a state of disaster was in place, rather than only during the first 168 hours, or seven days. A state of disaster often lasts longer than a week, and the bill should cover the entire duration without having to depend on the governor to

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extend the time period during which it was effective. This would reduce ambiguity and better protect lawful gun owners from excessive penalties.

Others said the bill should require concealed carry during the no-permit period, which should last for 48 hours instead of seven days, and only be allowed under a mandatory evacuation order and not all declared emergencies.

## Notes

The HRO analysis of HB 1177 appeared in Part One of the April 17 *Daily Floor Report*.

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# Creating, storing DNA records upon arrest for certain felony offenses

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## HB 1399 by Smith

*Effective September 1, 2019*

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**HB 1399**, the Krystal Jean Baker Act, requires a defendant to provide to a law enforcement agency one or more specimens for creating a DNA record upon arrest for the following felonies:

- murder;
- capital murder;
- kidnapping;
- aggravated kidnapping;
- human smuggling;
- continuous human smuggling;
- human trafficking;
- continuous human trafficking;
- continuous sexual abuse of a young child or children;
- indecency with a child;
- assault;
- sexual assault;
- aggravated assault;
- aggravated sexual assault;
- prohibited sexual conduct;
- robbery;
- aggravated robbery;
- burglary;
- theft;
- promotion of prostitution;
- aggravated promotion of prostitution;
- compelling prostitution;
- sexual performance by a child; or
- possession or promotion of child pornography.

The law enforcement agency taking the specimen is required immediately to destroy the record of the collection on acquittal of the defendant, on dismissal of the case, or after an individual has been granted relief with a writ of habeas corpus based on a court finding or determination that the person is actually innocent of the crime for which the person was sentenced. As soon as practicable after such an acquittal or dismissal, the court must provide notice to the applicable law enforcement agency and the Department of Public Safety (DPS).

A defendant convicted of a felony does not have to provide a DNA sample as a condition of probation if it

was already submitted on arrest or conviction under the bill or other law.

The DPS director is required to apply for any available federal grants applicable to creating and storing DNA records of persons arrested for certain offenses.

### Supporters said

HB 1399 would expand the state's DNA database to link offenders to crimes more easily, helping law enforcement solve more cases and bringing justice to more victims and their families.

In 2001, Texas enacted SB 638 by Barrientos, which was the first DNA collection law in the country, requiring DNA samples from those indicted for certain felony offenses. However, some have raised concerns that current law has allowed offenders to slip through the cracks, including when they plead guilty to lesser charges. Currently, 18 states have enacted broader DNA collection laws that require DNA to be taken at the time of arrest from all felony offenders. Where enacted, these broader laws have increased the rate of solved cases.

The collection of DNA provides no more personal information than other items collected by a law enforcement agency upon arrest. Agencies can take fingerprints and photos of arrestees without running afoul of constitutional protections. DNA profiles created from samples do not provide genetic information, containing only non-coding markers selected for their uniqueness. The bill also would not affect current requirements that law enforcement dispose of DNA samples and remove them from the database if a person was found not guilty, ensuring that the privacy of innocent people was protected.

### Critics said

By requiring the collection of DNA samples upon arrest as opposed to waiting until conviction, HB 1399



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could violate the due process rights of defendants who should be presumed innocent until proven guilty.

The number of samples in the DNA database, even if they are from felony offenders, should be kept to a minimum to protect privacy interests. DNA samples contain personal information that could be subject to misuse and abuse, and expanding the database increases the risk that such information could be used for purposes other than law enforcement.

HB 1399 would create a burden on taxpayers related to the increase in collection and storage of DNA samples. According to the Legislative Budget Board's fiscal note, the Department of Public Safety estimates it would sample about 40,000 more defendants a year, requiring additional full-time equivalent employees and lab equipment and increasing operating costs and capital expenditures. The additional cost combined with the concerns over privacy and due process rights makes the bill's provisions an unnecessary use of state money.

## Notes

The HRO analysis of HB 1399 appeared in Part Four of the April 23 *Daily Floor Report*.

The 86th Legislature enacted a related bill, **HB 979** by Hernandez, which took effect September 1, 2019. The bill requires a person convicted of a class A misdemeanor offense (up to one year in jail and/or a maximum fine of \$4,000) of unlawful restraint or assault to provide to a law enforcement agency one or more specimens for the purpose of creating a DNA record after conviction. HB 979 was digested in Part One of the April 16 *Daily Floor Report*.

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# Changes to the death penalty

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**HB 1936 by Rose, HB 1139 by S. Thompson, HB 1030 by Moody**

*HB 1936 died in the Senate, HB 1139 died in conference committee, HB 1030 died in the Senate*

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The 86th Legislature considered several bills addressing the death penalty, including bills that would have prohibited death sentences for crimes committed by those with severe mental illness, established a pre-trial procedure to determine if a defendant was a person with intellectual disabilities and thereby ineligible for the death penalty, and revised jury instructions in the sentencing phase of death penalty cases.

**HB 1936** would have prohibited a death sentence for a capital murder defendant determined under the criteria in the bill to be a person with severe mental illness at the time of the offense. If found guilty of capital murder, the defendant would have been sentenced to life in prison without parole.

The bill would have defined “person with severe mental illness” to mean a person who had schizophrenia, a schizoaffective disorder, or a bipolar disorder and, as a result of that disorder, had active psychotic symptoms that substantially impaired the person’s capacity to appreciate the nature, consequences, or wrongfulness of the person’s conduct or to exercise rational judgment in relation to the person’s conduct.

Defendants planning to offer evidence that they were a person with severe mental illness at the time of the alleged offense would have been required to notify the court and prosecutor before a trial. Unless timely notice was given, the evidence would not have been admissible at the guilt or innocence stage of the trial unless the court had found good cause for failing to give notice.

The issue would have been decided by a jury, and the defendant would have had to prove the issue by clear and convincing evidence.

If the jury determined that the defendant was not a person with severe mental illness at the time of the commission of an alleged offense and the defendant was convicted, the judge would have been required to conduct a sentencing proceeding under standard procedures in capital cases. Defendants could have presented evidence of a mental disability as allowed under those procedures.

**HB 1139**, as passed by the House, would have statutorily prohibited the death penalty for a defendant who was a person with an intellectual disability and would have established pretrial procedures for determining if a defendant met that standard.

A defendant’s attorney would have had until one year from the date of an indictment to request that the judge hold a hearing to determine if the defendant was a person with an intellectual disability. The bill would have established deadlines for the hearing, and allowed for hearings outside of the time limits under certain circumstances if good cause was shown.

The burden would have been on the defendant to prove by a preponderance of the evidence that the defendant was a person with an intellectual disability. The state would have been able to offer evidence to rebut evidence offered by the defendant and would have been entitled to an appeal to the Texas Court of Criminal Appeals.

On the request of either party or on the judge’s own motion, a judge would have been required to appoint a disinterested expert to determine whether the defendant was a person with an intellectual disability.

Evidence offered in the hearing would have had to have been consistent with prevailing medical standards for the diagnosis of intellectual disabilities. The bill would have established definitions related to the determination.

Within 30 days after a hearing, the judge would have been required to determine whether the defendant was a person with an intellectual disability. If the judge did not determine that the defendant was a person with an intellectual disability, the trial would have to have been conducted as if a hearing had not been held. At the trial, the jury could not have been informed that the judge had held a pre-trial hearing, and the defendant could have presented evidence of intellectual disability as otherwise permitted by law.

**HB 1030**, as passed by the House, would have revised the jury instructions for the sentencing phase of a

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capital felony trial. It would have removed requirements that courts inform a jury that it may not answer “no” to questions about the defendant’s continuing threat to society and the defendant’s role as a party to an offense unless 10 or more jurors agreed and that it may not answer “yes” to the question about whether there mitigating circumstances to warrant a sentence of life in prison without parole rather than a death sentence unless 10 or more jurors agreed.

## Supporters said

HB 1936 would establish fair procedures to determine if defendants in a capital case had a severe mental illness, while holding defendants accountable for their actions with a punishment of life without parole. Justice is not served and individuals’ rights are not protected when the state executes a person who, at the time of an offense, had a severe mental illness. The death penalty should be limited to the most culpable offenders, and those with severe mental illness at the time of an offense do not fit this criteria.

Given a series of U.S. Supreme Court decisions, including ones barring execution of defendants with intellectual disabilities, those who were juveniles at the time of an offense, and those incompetent at the time of execution, it is inconsistent with legal precedent to allow the execution of defendants described by the bill. The bill could help address concerns about the possibility of executing an innocent person with severe mental illness due to issues such as a potential for false confessions and an impaired ability to help their defense.

Existing determinations about whether someone is competent to stand trial or to be executed do not consider a person’s mental illness and impairments at the time of an offense. The insanity defense imposes an inappropriate standard that applies a complete defense to conviction and does not address the issues contemplated in the bill.

HB 1936 is narrowly drawn to apply to the most severely mentally ill defendants and to require decisions on a case-by-case-basis. Baseless claims would be avoided because the issue could be submitted to the jury only if it was supported by evidence. The process could save the state money because trials could be shorter, confinement for the convicted would be different, and appeals would be streamlined.

HB 1139 would give needed direction to Texas courts on how to determine whether an individual was

intellectually disabled and therefore ineligible for the death penalty. The bill would respond to court rulings and establish a statewide process so that individual courts did not have to develop their own standards to make such determinations and so defendants were treated uniformly.

Since the 2002 ruling by the U.S. Supreme Court that it was unconstitutional to execute individuals with intellectual disabilities, the states have been left to determine who met that standard. Texas does not have a statutory standard, so courts have used various factors, including ones identified by the Texas Court of Criminal Appeals. That method has proved imperfect, and courts have sent death penalty cases back to lower courts for new punishment hearings. In 2017 and 2019, the U.S. Supreme Court stopped a Texas execution based on the standards applied by Texas courts.

HB 1139 would establish a fair pre-trial process in which both sides could present evidence to determine whether a defendant was intellectually disabled, reducing abuse of the system. It would ensure courts applied an appropriate standard by requiring evidence to be consistent with prevailing medical standards and would allow the prosecutor to appeal. Individuals who met the standards in the bill would not go unpunished but would receive life without parole if convicted.

Holding a hearing pre-trial would save time and money, resulting in fewer trials. Jury selection and trials could take less time. Evidence testing could be reduced and appeals streamlined. It also would help victims and the accused to know before the trial how the case would proceed.

Pre-trial hearings before judges would be the best place to make these determinations. It could be difficult for juries to make a fair decision later in a trial after hearing the details of an offense and the defendant’s criminal history. Using a jury to make a decision before a trial would be more expensive because of the costs to select a jury and educate jurors on how to apply medical standards. Judges take an oath to uphold the law and apply it fairly, so concerns about judges imposing their own opinion on the death penalty would be misplaced. In capital cases, jurors should focus on guilt or innocence and then, if there is a punishment phase, answering specific questions, not on making medical determinations.

HB 1030 would eliminate misleading jury instructions in capital felony cases so jurors had accurate information about their duties. The current confusion over the questions put to juries deciding punishment in a

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capital case can result in jurors casting votes not based on how they want to answer the question but on what they perceive to be requirements to reach certain vote counts. Jurors being asked by the state to decide between life and death should have clear instructions to ensure fairness and truth in sentencing and public confidence in their decisions. HB 1030 would not discourage deliberation by juries or change the questions jurors answer or the effect of those answers, only eliminate misleading information that can skew votes.

## Critics said

HB 1936 is not necessary because current law establishes appropriate standards and procedures for determining who can receive death sentences. The state does not need to create a new standard and process to properly handle cases of defendants with severe mental illness or to implement court rulings about the death penalty. Under current law, a person can be declared incompetent to stand trial or a defendant may be found not guilty by reason of insanity. In addition, a jury may consider mental illness as a mitigating circumstance when imposing a sentence in a capital case and can impose life without parole. There is a thorough appeals system through state and federal courts, and those with death sentences must be competent to be executed.

The criteria that would be established by HB 1936 to define persons with severe mental illness would create a broader, lower standard for being found ineligible for the death penalty. It would be untested in Texas and likely raised by numerous defendants

The bill could result in trial delays or additional appeals. Texas' procedures in capital murder cases have been well established through litigation and practice, and any court scrutiny of the change in the bill could lengthen the process.

HB 1139 would establish inappropriate procedures and standards because the decision about intellectual disability should continue to be made during the punishment phase of a trial. The current process could be adapted to comply with the decisions of the U.S. Supreme Court by developing jury instructions or admonishments about what to consider and how to determine if a defendant was intellectually disabled. This is routinely done during trials and would ensure that determinations were made fairly while respecting the role of juries. A pretrial decision made solely by a judge, perhaps one predisposed against the death penalty, would preclude a

jury from weighing in on a matter important to the local community and the criminal justice system.

The pre-trial process that would be established by the bill could be abused if requests for hearings became routine, resulting in an increase in the number of defendants raising intellectual disability as an issue and increasing costs.

HB 1030 could distort the sentencing phase of capital felony cases by discouraging jury deliberation and consensus. The current sentencing structure is designed to have jurors deliberate and come to an agreement on questions without focusing on the punishment being imposed by answers to those questions. Removing the instructions about certain questions so that juries are told only about unanimous votes could encourage holdouts instead of open-minded discussion and ultimately agreement by a jury considering the important decision of life or death.

## Notes

The HRO analysis of HB 1936 appeared in Part Two of the May 1 *Daily Floor Report*. The HRO analysis of HB 1139 appeared in Part Three of the April 25 *Daily Floor Report*, and the analysis of HB 1030 appeared in the April 9 *Daily Floor Report*.

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# Modifying bail setting process, using pretrial risk assessment tool

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**HB 2020 by Kacal**

*Died in the Senate*

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**HB 2020** would have made several changes to the state's bail setting process. The bill would have created the Bail Advisory Commission to develop a pretrial risk assessment tool for use in setting bail for criminal defendants, modified rules governing the bail setting process, and restricted the authority to release certain defendants on bail to magistrates with specified qualifications.

**Bail Advisory Commission.** HB 2020 would have created the Bail Advisory Commission to work with the Office of Court Administration to develop recommendations for a pretrial risk assessment tool to be used by courts when setting bail. The 12-member commission would have included lawmakers and appointees selected by the governor, the chief justice of the Texas Supreme Court, and the presiding judge of the Texas Court of Criminal Appeals. It would have been abolished September 1, 2023.

The pretrial risk assessment tool would have had to be validated and standardized for statewide use and to meet certain criteria. The Texas Judicial Council would have had to either adopt the tool recommended by the commission or a revised version, and OCA would have had to provide the tool to magistrates at no cost. Counties would have been able to modify the tool.

The commission also would have had to recommend best practices for personal bond offices and collect information on the rate of failure to appear in court and the commission of new offenses for those released on bail.

**Use of risk assessment tool, other factors.** The bill would have required magistrates considering release on bail for a defendant charged with a class B misdemeanor or higher offense to have the personal bond office or another trained person use the pretrial risk assessment tool to assess the defendant. Courts, judges, magistrates, and officers would have had to consider the results of the pretrial risk assessment when setting the amount of bail. Rules governing the bail-setting process would have had to include consideration of a defendant's criminal history,

including acts of family violence, the future safety of peace officers, and any other relevant fact or circumstance to be considered.

**Authority to release on bail.** HB 2020 would have allowed only magistrates who met certain qualifications established in the bill to release on bail defendants charged with felonies or with sex offenses and assault offenses that were class B misdemeanors or higher.

## Supporters said

HB 2020 would reform the bail-setting process in Texas to improve public safety and to make the process fairer. The current system can result in magistrates setting bail amounts that do not reflect the threat that those accused of crimes pose to the public or the likelihood that they will appear in court. The current system has resulted in bail decisions that allow high-risk and dangerous defendants with financial means out on the streets. This has resulted in tragedies such as 2017 killing of Department of Public Safety trooper Damon Allen, for whom the bill would be named. Trooper Allen was shot during a traffic stop by someone released on bail despite being a repeat offender with a violent past.

The current system also keeps many non-violent, low-risk defendants without money in jail before trial. About three-quarters of those in local jails are awaiting trial, many unnecessarily because they were assessed bail they could not pay. Pretrial incarceration can have undesirable consequences, including loss of jobs, missed schooling, delinquent bills, family separations, and more.

Lawsuits challenging the system in some Texas counties have resulted in changes in those counties, and courts could intervene throughout Texas if statewide changes are not made.

**Bail Advisory Commission.** The commission created by HB 2020 would be broad-based and include members from throughout the criminal justice system.

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With its expertise, it would be able to develop and adopt an appropriate risk assessment tool and disseminate information to help all areas of the state.

**Use of risk assessment tool, other factors.** HB 2020 would improve bail decisions by giving magistrates full information about those accused of crimes. Currently, magistrates can make bail decisions without knowing a defendant's criminal history or other vital information such as their history of appearing in court or history of violence. HB 2020 would give magistrates a risk assessment tool that has been shown to help make accurate decisions about these factors. The bill would ensure the assessment tool was fair by requiring that it be objective, validated, and standardized, and prohibiting it from considering factors that would disproportionately affect persons who were members of racial or ethnic minority groups or who were socioeconomically disadvantaged. The tool also would have had to produce results that were unbiased with respect to the race or ethnicity of defendants.

HB 2020 would not reduce judicial discretion. Bail decisions would continue to be made by magistrates with no decision predetermined. HB 2020 would not eliminate bail schedules.

**Authority to release on bail.** HB 2020 would improve the bail-setting process in Texas by giving those setting bail better information to make decisions and by establishing qualifications for magistrates setting bail in the most serious cases. The qualifications that would be established by the bill would be reasonable, requiring training but not requiring that magistrates be lawyers.

## Critics said

HB 2020 would reduce the ability of counties to design their own bail systems and would require the use of a tool that could have negative effects. The bill could interfere with procedures some counties have adopted in response to litigation. In some cases, the bill might not go far enough in addressing issues raised by courts about bail systems that keep in jail those who do not have the means to pay.

**Use of risk assessment tool, other factors.** The statewide requirement to use a pretrial risk assessment tool could unfairly result in the detention of some defendants who otherwise would be released. Under current practices, some defendants, especially those accused of non-violent, low-level misdemeanors, might be released automatically

under a personal bond that does not require cash. Under the bill, these defendants could be assessed bail and held in jail because they could not pay it. If risk assessments are to be mandated, they should be coupled with a presumption of release on personal bond and support for pretrial services.

HB 2020 would, in effect, eliminate the ability of a county to use bail schedules, which can be helpful in making appropriate and timely releases from jail. Under a bail schedule, a standing order allows magistrates to set bail based on the factors in the schedule, and this would be precluded if magistrates had to use and consider a risk assessment tool.

Risk assessment tools are unproven, can be unreliable and biased, and can perpetuate or introduce unfair disparities into the bail-setting process. A better approach would be to ensure that magistrates directly received criminal history and any other information needed to make bail decisions without the information being filtered through a risk assessment.

**Authority to release on bail.** Restricting who can make bail decisions in certain cases could be burdensome and costly for counties, especially small or rural ones.

## Notes

The HRO analysis of HB 2020 appeared in Part Two of the *May 7 Daily Floor Report*.

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# Limiting arrests for fine-only class C misdemeanors

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## HB 2754 by White

*Died in the House*

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HB 2754, as passed to engrossment by the House, would have prohibited a peace officer from arresting someone without a warrant for one or more misdemeanor offenses punishable by a fine only, unless the offender failed to present appropriate identification or the officer had probable cause to believe:

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

The prohibition on arrest would have applied to all offenses, including traffic offenses, with certain exceptions. The prohibition would not apply to certain assault offenses, voyeurism, public intoxication, and alcohol-related offenses committed by minors.

Officers charging someone with a fine-only misdemeanor subject to the prohibition would have been required instead to issue a citation, and law enforcement agencies would have been required to adopt written policies on issuing the citations. Such policies would have had to provide a procedure for officers to verify a person's identity upon the person's presentation of appropriate identification and to issue a citation. The policy also would have had to ensure judicial efficiency, law enforcement efficiency and effectiveness, and community safety. Each agency would have been required to develop a policy in consultation with judges, prosecutors, commissioners courts, cities, and residents within the agency's jurisdiction.

### Supporters said

HB 2754 would address concerns about the negative consequences of thousands of arrests made each year for class C misdemeanors, such as traffic violations, that are not punishable by jail time but only by a fine. For individuals arrested on minor offenses, the jail time, criminal records, legal bills, and trauma can have a serious negative impact. When the maximum penalty for an offense is a fine, being arrested is a more severe

punishment than anything intended under the law. For the majority of fine-only misdemeanors, citing and releasing offenders and requiring them to pay a fine upon conviction would make the penalty proportional to the offense. Arrests for such offenses should be limited to the circumstances outlined in the bill.

Class C misdemeanor arrests strain the criminal justice system, are costly to taxpayers, and can negatively impact those arrested while not significantly contributing to public safety. Costs to taxpayers include peace officers' time, jail intake processing, and housing individuals until their release.

HB 2754 would not remove a tool from law enforcement, as officers would retain the ability to make arrests for more serious offenses and for some class C offenses, such as certain assaults. The bill also would give officers the discretion to make a class C arrest if the officer had probable cause to believe there was a clear and immediate danger to the offender or the public or to believe the offender would not appear in court. Allowing arrests in these limited situations would not give officers leeway to discriminate but instead would establish uniform parameters for making arrests based on probable cause or when a person could not be identified. Currently, officers can make arrests for almost all class C misdemeanors, and that discretion would be appropriately limited under the bill.

Some law enforcement agencies already have adopted policies to limit class C misdemeanor arrests, and their experiences illustrate that such arrests can be reduced without harming public safety. Arrests for minor, fine-only offenses should not be used to as a way to investigate other crimes.

### Critics said

HB 2754 would remove an important tool from law enforcement and impede peace officers' ability to enforce the law and protect the public. The current discretion that officers have to make an arrest on a fine-only class C misdemeanor should not be limited. This discretion is used with intent and purpose, not malice, and is not abused.

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Only a very small percentage of class C misdemeanors involve an arrest, but these arrests can lead to breaks in investigating more serious offenses and are sometimes used to get an offender momentarily off the street while not imposing a more serious charge.

## **Other critics said**

The bill would impose an unworkable standard on making arrests for class C misdemeanors that would give law enforcement officers too much discretion. It is unclear how an officer would determine probable cause for future events, such as an offender not appearing in court, and it is not clear what type of identification would be allowed under provisions that authorize arrests if a person “fails to present appropriate identification.” Officers could use this broad discretion to make an arrest under almost any circumstance by claiming that they think someone would not show up for a court appearance or that identification was not appropriate.

## **Notes**

The HRO analysis of HB 2754 appeared in Part Four of the May 6 *Daily Floor Report*.

The bill was approved on second reading on May 7. On May 8, the House approved the third-reading amendment by White that would have authorized arrests for class C misdemeanors if an individual “fails to present appropriate identification.” The bill initially passed to engrossment as amended, but the votes on the bill and on the third-reading amendment were later reconsidered. The amendment was withdrawn, and the bill then failed to pass by a vote of 55-88-1. On May 10, a motion to reconsider the bill failed.



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# Creating criminal, civil penalties for damage to critical infrastructure

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**HB 3557 by Paddie**

*Effective September 1, 2019*

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**HB 3557**, the Critical Infrastructure Protection Act, creates new offenses related to damaging or impairing the operation of a critical infrastructure facility and provides for civil penalties.

In addition to the definition of “critical infrastructure facility” under Government Code sec. 423.0045, the bill would include any pipeline transporting oil or gas or the products or constituents of oil or gas and any such facility or pipeline that is under construction, including all equipment and appurtenances used during construction.

**Offenses.** The bill creates the following four offenses for damaging or interrupting the operation of critical infrastructure facilities.

*Damaging or destroying critical infrastructure facility.* It is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) for a person to, without the effective consent of the owner, enter or remain on or in a critical infrastructure facility and intentionally or knowingly damage or destroy the facility. It is a defense to prosecution that the damage caused to the facility was only superficial.

*Intent to damage or destroy critical infrastructure facility.* It is a state jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) for a person to, without the effective consent of the owner, enter or remain on or in a critical infrastructure facility with the intent to damage or destroy the facility. It is a defense to prosecution that the person intended to cause only superficial damage.

*Impairing or interrupting operation of critical infrastructure facility.* It is a crime for a person to, without the effective consent of the owner, enter or remain on or in a critical infrastructure facility and intentionally or knowingly impair or interrupt the operation of the facility. The offense is a state jail felony.

*Intent to impair or interrupt operation of critical infrastructure facility.* It is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) for a person to, without the effective consent of the owner, enter

or remain on or in a critical infrastructure facility with the intent to impair or interrupt the operation of the facility.

If any offense under the bill also constitutes an offense under other law, a person may be prosecuted for either or both offenses.

**Punishment for corporations, associations.** A court must sentence a corporation or association found guilty of an offense under the bill to pay a fine of no more than \$500,000.

**Restitution.** If an offense under the bill results in damage to or destruction of property, a court may order an offender to make restitution to the owner in an amount equal to the value of the property on the date of the damage or destruction.

**Civil liability.** A defendant who engages in conduct constituting an offense under the bill is liable to the property owner for damages arising from that conduct.

It is not a defense to liability that the defendant has been acquitted or has not been prosecuted or convicted under the bill, or has been convicted of a different offense or of a different type or class of offense, for the conduct.

**Certain additional liability.** An organization that, acting through a person serving in a managerial capacity, knowingly compensates a person for engaging in conduct occurring on the premises of a critical infrastructure facility is liable to the property owner for damages arising from the conduct if it constitutes an offense under the bill.

**Damages.** A claimant who prevails in a suit under the bill must be awarded actual damages and court costs. The claimant also may recover exemplary damages.

**Other provisions.** The cause of action created by the bill is cumulative of any other remedy provided by common law or statute. Laws relating to actions involving the exercise of certain constitutional rights and provisions limiting the amount of recovery in certain actions do not apply to a cause of action arising under the bill.

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## Supporters said

HB 3557 would protect critical infrastructure facilities and private property owners against intentional damage and operational impediments by creating strong criminal penalties and civil liabilities for individuals and organizations to deter such dangerous activities.

Critical infrastructure facilities are essential to daily life, and the Legislature should ensure that facilities in Texas are protected against destructive activities. There are well-documented incidents of coordinated criminal activity aimed at damaging or destroying critical infrastructure facilities or impeding their operations or construction. Intentional damage can result in costly clean-up operations that are largely paid for by state or local governments or the operator, rather than the person or organization that committed the damage. The bill would provide protections not only against intentional damage but also against construction delays and shutdowns, which are costly and burdensome to businesses and Texans.

Current law provides only minimal criminal and civil penalties for people trespassing on critical infrastructure facilities with the intent to do damage, and often related cases are dismissed. It is necessary to increase the consequences to deter those who wish to do harm.

The bill would not restrict or otherwise affect current laws that allow for free speech and the right to protest, and people still would be free to exercise their rights. The bill would affect only people who trespass, cause damage, and participate in illegal and unsafe activity.

HB 3557 would not require a prosecutor to charge a person for an offense under the bill but simply would provide another tool and the discretion to choose between existing law or the bill's provisions. Charges could be decided based on the seriousness of the offense or in light of a well considered public interest. Under the bill, a protester placing a sticker on a pipeline or spray painting a facility would likely still be charged under existing law, if no damage was done.

## Critics said

HB 3557 is unnecessary because existing law is sufficient to punish the activities that would constitute an offense under the bill. Damaging or destroying critical infrastructure facilities or entering or remaining on a facility already is covered under Texas Penal Code with criminal mischief and trespassing statutes. By creating

felony offenses, the bill would overly criminalize activities that are already lesser offenses under current law.

The high criminal and civil penalties, breadth of the offenses, and broad definition of critical infrastructure facility to include construction sites likely would have a chilling effect on free speech and assembly rights. For example, those wanting to protest construction of a new pipeline could be subject to a felony offense under the bill. While some are willing to risk lesser offenses, most may opt to not exercise their rights for fear of harsh penalties.

The bill also is too broad and could impose severe penalties for generally benign activities. Vandalizing or defacing a critical infrastructure facility would not inherently cause damage, and the bill could open the possibility of a person being charged with a felony for putting a sticker on a pipeline or spray painting a facility.

## Notes

The HRO analysis of HB 3557 appeared in Part Two of the May 1 *Daily Floor Report*.

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# Transferring driver's license, other programs from Department of Public Safety

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## SB 616 by Birdwell

*Generally effective September 1, 2019*

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**SB 616** continues the Department of Public Safety (DPS) until September 1, 2031, provides for the conditional transfer of the driver's license program from DPS to the Texas Department of Motor Vehicles (TxDMV), transfers the motorcycle and off-highway vehicle operator training programs to the Texas Department of Licensing and Regulation (TDLR), requires an annual report on border crime, and reclassifies the Texas Private Security Board as an advisory committee.

**Transfer of driver's license program.** DPS must contract with an independent third party to conduct a feasibility study that makes recommendations on the management and operating structure of the driver's license, commercial driver's license, and election identification certificate programs. The study also must make recommendations on the opportunities and challenges of transferring the programs from DPS to TxDMV. By September 1, 2020, the contractor must submit a report on the feasibility study to the Legislature, governor, Sunset Advisory Commission, DPS, and TxDMV.

If the report is not submitted by the required date, then all functions and activities of the programs will be transferred from DPS to TxDMV effective September 1, 2021. Other conditions that apply only if the report is not submitted include that DPS and TxDMV must establish a work group to plan the transfer and the work group must adopt a transition plan, including ensuring that the transfer be completed on or before August 31, 2021. The work group must provide a quarterly report to the lieutenant governor, the House speaker, the governor, and the Sunset Advisory Commission. TxDMV must study the most effective use of available state and county resources to administer the transferred programs, prioritizing administrative efficiency and cost savings as well as accessibility of the programs, including in rural areas.

**Motorcycle and off-highway vehicle operator training programs.** On September 1, 2020, all functions and activities of the motorcycle operator training and safety and the off-highway vehicle operator education and certification programs are transferred from DPS to TDLR.

The Texas Commission of Licensing and Regulation must establish a board to advise TDLR on the motorcycle operator training and safety program. The Texas A&M Transportation Institute, in consultation with TDLR, also must research motorcycle safety and provide advocacy and public education on related issues.

*Training programs.* SB 616 prohibits a person from offering or conducting training in motorcycle operation unless the person is licensed as a motorcycle school, offers and conducts training in accordance with curriculum approved by TDLR, and employs or contracts with a licensed instructor. TDLR may contract with qualified persons, including institutions of higher education, to conduct courses under the program or research motorcycle safety in Texas.

To be eligible for a motorcycle school license, an applicant must meet minimum standards established by the commission for health and safety, the school's facility, and consumer protection. To be eligible for an instructor license, an applicant must meet certain requirements, including the completion of a commission-approved training program on motorcycle operator training and safety instruction administered by the Texas A&M Engineering Extension Service.

The Texas Commission of Licensing and Regulation must establish minimum curriculum standards for training and safety courses. The bill removes a requirement that the program contain information on operating a motorcycle while carrying a passenger and may include curricula developed by the Motorcycle Safety Foundation.

TDLR must issue a certificate to a person who completes a department-approved training and safety course on notification from the motorcycle school that conducted the course. The department also may develop a process that allows a school to issue a certificate of completion.

*Motorcycle safety grant program.* Using money from the Motorcycle Education Fund Account, TDLR may

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establish and administer a grant program to improve motorcycle safety. An institution of higher education is eligible to receive a grant and may use the money to administer the instructor training program or provide research, advocacy, and education on motorcycle issues. TDLR also may award a person a grant to promote the training and safety program, increase the number of individuals seeking motorcycle operator training or licensure as an instructor, or to support any other goal to improve motorcycle safety.

*Disposal of equipment.* Before August 31, 2020, DPS must dispose of motorcycles and other equipment related to the motorcycle operator training and safety program that it possesses or has leased to training entities. After providing any entity with a leased motorcycle a reasonable period to purchase or return it, DPS must transfer the motorcycles and other equipment to meet the needs of TDLR, the Texas A&M Transportation Institute, and the Texas A&M Engineering Extension Service.

**Report on border crime.** DPS must submit to the Legislature by May 30 of each year a report on border crime that includes statistics for each month of the preceding year and yearly totals of all border crime and related criminal activity that occurred in each county in a DPS region adjacent to the Texas-Mexico border. The report also must include statewide crime statistics for the reported crimes.

**Regulation of private security.** Effective September 1, 2019, the bill abolished the Texas Private Security Board and transferred its functions and activities to DPS. The board was reclassified as the Texas Private Security Advisory Committee, and the Public Safety Commission was required to appoint its members.

Under SB 616, the advisory committee must meet at least quarterly and provide recommendations to DPS and the Public Safety Commission on the administration of laws governing private security and the regulation of related industries.

The bill also makes a number of changes to licensing under the Private Security Act. It defines an “individual license” as one issued by DPS entitling an individual to perform a service regulated by the act for a company license holder. A “company license” is one issued by DPS entitling a person to operate as a security services contractor or investigations company. A person must obtain the proper individual license and be employed by a company license holder to perform any activity regulated by the Private Security Act. An individual who owns at

least a 51 percent interest in a company license holder must obtain the appropriate individual license.

Under the bill, private security consultants and consulting companies, guard dog companies and trainers, and security salespersons no longer must be regulated by the Private Security Act. Any related license, endorsement, or other authorization expired September 1, 2019. The bill also removes certain company license classifications and a requirement that qualifying telematics companies pay an annual fee to be exempt from the Private Security Act.

The bill revises the requirements for a security department of a private business or a political subdivision to employ a commissioned security officer. Instead of a letter of authority, the security department must provide notice to DPS of the intent to employ a commissioned security officer. DPS must maintain a registry of such security departments.

## Supporters said

SB 616 would continue the Department of Public Safety’s (DPS) role of protecting the public and providing statewide law enforcement and would allow DPS to work more efficiently and effectively in performing its duties.

**Transfer of driver’s license program.** The bill would address concerns that the current processes, procedures, and management of the driver’s license program are in need of reform by providing for the conditional transfer of the program from DPS to the Texas Department of Motor Vehicles (TxDMV). Transferring the program would allow DPS to continue prioritizing other public safety functions and combine the program’s administration with motor vehicle services and regulation in TxDMV, increasing efficiency and benefiting customers.

Transferring the program would be complex, requiring consideration of information technology infrastructure and systems, human resources, facilities, and other factors. For this reason, the bill provides for an independent, third-party feasibility study to develop a framework for the agencies to work together to ensure a successful transfer. TxDMV also would assess personnel, property, and technology resources, among other items, to provide an opportunity for TxDMV to address any needs prior to the transfer.

**Motorcycle and off-highway vehicle operator training programs.** Sunset staff have suggested the Texas Department of Licensing and Regulation (TDLR), rather

than DPS, could better administer and oversee motorcycle and off-highway vehicle safety programs. TDLR has significant experience with simplifying regulatory functions, seeking input from regulated industries, having cooperative interagency discussions, and administering similar programs. The programs would receive more attention at TDLR than at DPS, which is appropriately more focused on law enforcement.

**Report on border crime.** The required report on border crime would provide adequate and necessary statistics to help the state measure the success of efforts to secure the border. Currently, DPS measures effectiveness by quantity of resources deployed and intelligence gained. However, this approach does not provide sufficient information about the return on investment for border security funds. Without also examining impacts to crime, neither DPS nor the Legislature can effectively plan future investments.

**Regulation of private security.** The bill would address concerns that some current regulations of the private security industry do not increase public safety. Conflicting authority between the Private Security Board and the Public Safety Commission has created inefficiencies, and overregulation contributes to a bureaucratic system that does not meaningfully promote a public interest. This regulation also creates barriers to doing business in Texas. Under SB 616, individuals and companies that provide direct private security services would continue to be regulated, while licenses and registrations for individuals and entities that do not directly provide private security services would be deregulated. This simplified structure would better focus DPS' resources on regulation that had a clear nexus to public safety.

## Critics said

While SB 616 appropriately would continue the Department of Public Safety, the transfer of numerous DPS programs under the bill could disrupt necessary services.

**Transfer of driver's license program.** Although it makes sense to move the driver's license program from DPS to TxDMV, now is not the time because TxDMV would need more resources to administer the program effectively. TxDMV lacks sufficient leadership and has deficiencies in its information technology system capacity that would need to be addressed before it could handle the program's administration. Others noted that TxDMV operates few service centers, since most transactions

are processed by tax assessor collectors, and this could negatively impact its ability to administer the program.

**Motorcycle and off-highway vehicle operator training programs.** The current motorcycle operator training program has functioned consistent with legislative directives and should not be transferred from DPS to TDLR. TDLR is a regulatory agency that would not be an appropriate advocate for motorcycle safety, and transferring the program away from DPS could reduce the number of trained riders, decrease training quality, and place motorcyclists at risk. Recent transfers of other programs have challenged TDLR's staff and operational resources and reduced its ability to absorb more responsibilities. As a result, TDLR would need more resources to succeed in the transfer, and these are not provided under the bill.

**Regulation of private security.** SB 616 should not abolish and reconstitute the Private Security Board as an advisory committee or deregulate certain services within the industry, as this would negatively affect public safety. The Private Security Board has the real-world experience necessary to effectively oversee the private security industry, and the board has been effective in voicing industry concerns. In addition, while it could be beneficial to ease the burden of regulation by reducing or eliminating certain training requirements, fully deregulating sections of the industry could negatively affect public safety.

## Other critics said

**Transfer of driver's license program.** SB 616 should specify what the third-party assessment would have to examine, especially the migration of information technology hardware and software for the driver's license program, as associated costs are estimated to be significant.

**Motorcycle, off-highway vehicle operator training programs.** The bill should require an independent, third-party assessment prior to the transfer of motorcycle and off-highway operator training programs. Any study should be sure to involve consultation with motorcyclists, safety experts, and other stakeholders.

In addition, TDLR would not be the best agency to administer these programs, and the Legislature should consider transferring them to other, more appropriate agencies. The off-highway vehicle operator training program should be transferred to the Texas Parks and Wildlife Department, which already has related sticker and training programs. The motorcycle training

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program should be transferred to the Texas Department of Transportation, which already has an interest in motorcycle safety.

## Notes

The HRO analysis of SB 616 appeared in Part One of the May 16 *Daily Floor Report*.

**HB 1** by Zerwas, the general appropriations act, allocates \$490.6 million in all funds to DPS for the driver's license program. It directs an additional \$1 million in general revenue for DPS to contract with an independent third party to make recommendations on the opportunities and challenges of transferring the program to TxDMV or becoming a standalone agency.

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# Disaster Response

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# Disaster prevention, protection, and mitigation

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**HB 2794 by Morrison, HB 2345 by Walle, HB 2305 and HB 7 by Morrison,  
SB 300 by Miles, SB 986 by Kolkhorst, HB 2340 by Dominguez, SB 285 by Miles**

*Effective September 1, 2019, unless noted*

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The 86th Legislature passed several bills related to disaster prevention, protection, and mitigation that were based on recommendations from the Governor's Commission to Rebuild Texas. The governor established the commission in the aftermath of Hurricane Harvey to oversee response and relief efforts between state and local governments and to be involved in the rebuilding process. The bills address the administration of emergency management in Texas, training and credentialing emergency management personnel, disaster services contracts, policies related to disaster response, measures to inform the public about disaster preparedness, and other aspects of emergency management operations.

**HB 2794**, effective June 10, transfers the administration of the Texas Division of Emergency Management (TDEM) from the Texas Department of Public Safety (DPS) to the Texas A&M University System and makes TDEM a component of the system. TDEM must manage and staff the state operations center under an agreement with DPS.

Under the bill, the governor, instead of the public safety director, appoints the chief of TDEM. The governor also must review the composition of the Emergency Management Council at least biennially and update or expand participating entities as necessary.

**HB 2345**, effective June 14, 2019, establishes the Institute for a Disaster Resilient Texas as a component of Texas A&M University under the management and direction of the Texas A&M University System's board of directors. The institute must collaborate with institutions of higher education and with state and local governmental entities to:

- develop data analytics tools to support disaster planning, mitigation, response, and recovery;
- create online tools to communicate disaster risks and ways to reduce them;
- provide evidence-based solutions to aid in forming state and local partnerships to support disaster planning, mitigation, response, and recovery; and
- collect and communicate flood-related

information for use by decision-makers and the public.

**HB 2305** requires TDEM to create a work group to develop a proposal for enhancing the training and credentialing of state and local emergency management personnel. The group must assess the training and credentials necessary for emergency management personnel to effectively oversee the response to and recovery from a disaster and must consult with institutions of higher education on developing degree programs in emergency management. The group must submit its proposal to the Legislature and the governor by November 1, 2020, and will be abolished January 1, 2021.

**HB 7** requires TDEM to develop a plan to help political subdivisions execute contracts for services they are likely to need following a disaster. The plan must include training on the benefits of executing disaster preparation contracts in advance of a disaster; recommendations on services that may be needed after a disaster, including debris management and infrastructure repair; and assistance with finding persons capable of providing those services.

TDEM must consult with the comptroller about including a disaster services contract on the schedule of multiple award contracts or as part of another cooperative purchasing program administered by the comptroller.

HB 7 also requires the governor's office to maintain a comprehensive list of regulatory statutes and rules that may require suspension during a disaster. On request by the governor's office, a state agency that would be impacted by the suspension of a statute or rule must review the list for accuracy and advise on any statutes or rules that should be added.

**SB 300** requires the General Land Office (GLO) to enter into indefinite quantity contracts with vendors to provide information management services, construction services, including engineering services, and other services to construct, repair, or rebuild property or infrastructure in the event of a natural disaster.



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A contract may not expire after May 1 of a calendar year. The terms of the contract must provide that it is contingent on the availability of funds, the occurrence of a natural disaster within 48 months after the contract's effective date, and delivery of services to an area declared by the governor or U.S. president to be a disaster area as a result of a natural disaster. Contracts must have a term of four years and may be funded by multiple sources, including local, state, and federal agencies and the disaster contingency fund established in law.

The GLO must ensure that it has contracts in place with vendors to provide the services described by SB 300 that take effect immediately on the expiration of a previous contract under the bill. If on September 1, 2019, the office had such contracts, it is not required to enter into new contracts that meet the bill's requirements until those existing contracts expire.

**SB 986** requires the comptroller to update the contract management guide to include contract management standards and information for contracts related to emergency management. The guide must include preferred contracting standards, information on contracts that may be necessary to respond to a natural disaster or to repair or rebuild property or infrastructure after a natural disaster, and advice on preparing for a natural disaster. The comptroller must develop the standards in consultation with TDEM, Texas A&M AgriLife Extension Service, Texas A&M Engineering Extension Service, and local governmental entities.

**HB 2340** establishes an unmanned aircraft study group, an information sharing work group, and a permitting task force and provides for the study of federal laws and policies related to disaster response.

*Unmanned aircraft study group.* The bill establishes a study group to examine issues related to the appropriate use of unmanned aircraft in responding to and recovering from a disaster, including strategies for coordinating and promoting the use of unmanned aircraft and recommended changes to state law that would allow more effective use of unmanned aircraft in the response and recovery. The group must submit recommendations to the Legislature by November 1, 2020, and will be abolished January 1, 2021.

*Information sharing work group.* TDEM must establish a work group of state agencies involved in disaster management. The group must develop recommendations for improving the way electronic information is stored and

shared among state agencies and between state and federal agencies to improve their capacity to respond to a disaster. The group must submit its recommendations to the governor by November 1 of each even-numbered year.

*Permitting task force.* TDEM must form a task force with representatives from certain state agencies to be activated if a state of disaster is declared because of weather conditions in order to expedite environmental permitting and access to funds from federal disaster relief programs following the disaster.

*Federal legislative and policy recommendations on disaster assistance.* The Office of State-Federal Relations, in consultation with TDEM, federal agencies, and members of Congress, must study federal laws and policies on issues affecting the ability of federal and state agencies, and local governments to cooperate in responding to a disaster, including issues related to procurement, housing assistance, information sharing, personnel, and federal disaster assistance programs. The office must make recommendations to improve relevant federal laws and policies to its advisory policy board by November 1, 2020. Related bill provisions will expire January 1, 2021.

*Adopting goals of FEMA strategic plan.* The bill adds to the purposes of Government Code ch. 418, the Texas Disaster Act, to encourage state agencies, local governments, nongovernmental organizations, private entities, and individuals to adopt goals from the Federal Emergency Management Agency (FEMA) strategic plan to ensure that the state is prepared to effectively respond to and recover from a disaster.

**SB 285** requires the governor to issue a proclamation each year before hurricane season instructing individuals, state agencies, and certain other entities to carry out activities listed in the bill to prepare for the upcoming hurricane season. Within 30 days after issuing the proclamation, the governor must publish on the Office of the Governor's website a report on the preparedness of state agencies for hurricane response. The governor by executive order may take any action necessary to ensure each state agency involved in hurricane response is able to respond.

GLO must conduct a public information campaign each year before and during hurricane season to provide local officials and the public with information on housing assistance that may be available under state and federal law in the event of a major hurricane or flooding event.

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## Supporters said

The bills related to disaster prevention, protection, and mitigation would implement several recommendations from the Governor's Commission to Rebuild Texas, enabling the state to be better prepared to withstand future disasters.

HB 2794 would improve the state's response to and recovery from disasters by integrating responsible state agencies more effectively; creating a single, unified structure for emergency preparation, prevention, response, recovery, and mitigation; and streamlining related administrative structures.

HB 2345 would address the need to better understand and communicate disaster risks to Texas communities, plan for disaster events, and take steps to mitigate them. The Institute for a Disaster Resilient Texas would help property owners understand risks, serve as a venue for stakeholder collaboration, and provide data to help inform public policy decisions.

HB 2305 would ensure that the training framework for emergency management personnel could be implemented in and was applicable to communities across the state. Although the state already offers courses in emergency management training, the bill could increase the thoroughness of current offerings as the majority of current coursework focuses on response, rather than recovery.

HB 7, SB 300, and SB 986 would help the state to respond faster and more efficiently to a disaster by eliminating administrative barriers and assisting local communities in procuring necessary services, such as debris removal and infrastructure repair, before a disaster.

HB 2340 would ensure that agencies at all levels of government were better prepared to handle any future disasters by promoting the effective use of drones in disaster response, enabling the sharing of resources and data, streamlining response and recovery efforts through the permitting task force and encouraging federal-state partnership, and embracing the goals of the FEMA strategic plan.

SB 285 would better inform the public about how to prepare for and survive a disaster.

## Critics said

HB 2305 could unnecessarily burden existing emergency management personnel by developing a framework that might require them to take unnecessary training. Certain local governments have developed sophisticated response and recovery functions, and requiring courses that may not increase the quality of certain local governments' management response could discourage some personnel from serving as emergency management leaders.

## Notes

The HRO analyses of HB 2305, HB 2340, and HB 2345 appeared in Part One of the April 10 *Daily Floor Report*.

The HRO analyses of HB 7 and HB 2794 appeared in Part One of the April 17 *Daily Floor Report*.

The HRO analysis of SB 300 appeared in Part Two of the May 14 *Daily Floor Report*.

SB 285 and SB 986 passed on the Local, Consent, and Resolutions Calendar and were not analyzed in a *Daily Floor Report*.

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# Disaster response

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**HB 2320 by Paul, HB 2325 by Metcalf, SB 6 by Kolkhorst, HB 3668 by Walle,  
SB 982 by Kolkhorst, SB 494 by Huffman**

*Effective September 1, 2019*

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The 86th Legislature passed several bills related to disaster response based on recommendations from the Governor's Commission to Rebuild Texas. The governor established the commission in the aftermath of Hurricane Harvey to oversee response and relief efforts between state and local governments and to be involved in the rebuilding process. The bills address state-local and public-private plans for emergency services, standards for official communication, local disaster response, and open government requirements during emergencies.

**HB 2320** requires the Texas Division of Emergency Management (TDEM) to collaborate with state and local agencies and public and private entities to create plans for improving emergency services during and after a disaster.

*Telecommunications.* Under the bill, TDEM must include private wireless communication, internet, and cable service providers in the disaster planning process. It must determine the availability of the providers' portable satellite communications equipment and portable mobile telephone towers to help with response and recovery immediately following disasters.

*Critical infrastructure.* TDEM must identify methods for hardening utility facilities and critical infrastructure in order to maintain essential services during disasters. It must collaborate with certain other state agencies to determine methods to reduce risks to and impacts on utility facilities and critical infrastructure from a disaster. Agencies must encourage entities responsible for utility facilities and critical infrastructure to implement the methods. Facilities owned or controlled by utilities regulated by the Public Utility Commission (PUC) are exempt from these requirements.

*Trade services.* By November 1, 2020, TDEM must submit a report to the Legislature on improving the oversight, accountability, and availability of building trade services following natural disasters. The report must be prepared in consultation with the Texas Department of Licensing and Regulation, among other entities, and must include strategies to increase the availability of tradespeople, approaches to increase prosecutions of

alleged fraud related to services offered, and methods to encourage performance bond requirements in contracts for such services.

*Disaster billing awareness.* TDEM, in cooperation with PUC, must promote public awareness of bill payment assistance available during a disaster for electric, water, and wastewater services, including assistance for consumers on level billing plans.

**HB 2325** requires TDEM to develop ways to improve and standardize official digital communication during disaster response.

*Mobile and web applications.* TDEM must develop a mobile app to communicate critical information, such as road and weather conditions, during a disaster directly to victims and first responders. It also must develop a comprehensive web portal to provide disaster information to the public. The portal must include information on disaster response and recovery activities and on obtaining assistance from federal and state agencies, organized volunteer groups, and other entities.

*Standards for social media use.* TDEM must develop standards for the use of social media as a communication tool by governmental entities during and after a disaster. The standards must require state agencies, political subdivisions, first responders, and volunteers that use social media to post consistent and clear information and require certain official social media accounts be used only for providing credible sources of information.

*911 text messages.* TDEM, in consultation with the Texas A&M AgriLife Extension Service, must coordinate state and local government efforts to make 911 emergency services capable of receiving text messages.

*Texas Information and Referral Network.* The bill requires the Texas Information and Referral Network at the Health and Human Services Commission to be able to assist with statewide disaster response and emergency management, and to communicate with clients of state and local agencies using text messages. The network must

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include a publicly accessible internet-based system to provide real-time data about the location and number of clients using the system and their requests.

*Community outreach.* Certain state and local entities must conduct community outreach and education activities on disaster preparedness each year. Entities include cities and counties, the Department of Public Safety, the Texas Education Agency, the Department of Insurance, the Texas Department of Transportation, the Department of State Health Services, and other state agencies.

*Contracts with certain entities.* A public safety entity or a governmental entity of another state may contract with the Department of Information Resources to use the consolidated telecommunications system if its use will assist the entity in providing disaster education or preparing for a disaster.

**SB 6** requires TDEM to develop a model guide on disaster response and recovery for local officials. The guide must include information on contracting for debris removal, obtaining federal disaster funding, coordinating construction of short- and long-term housing, and obtaining assistance from volunteer organizations. TDEM, in coordination with the Texas A&M AgriLife and Engineering extension services, must provide training based on the guide as part of the emergency management training course.

**HB 3668** requires the Office of the Governor to establish a program to provide grants to nonprofit organizations for distribution to nonprofit food banks to prepare for or respond to disasters. To be eligible, a nonprofit organization must be a member of the Texas Voluntary Organizations Active in a Disaster and must have at least five years of experience coordinating a statewide network of nonprofit food banks and charitable organizations that distribute food to needy or low-income individuals during disasters.

**SB 982** requires TDEM, in consultation with the Department of State Health Services (DSHS) and local governmental entities that have emergency management plans, to develop a plan to increase capabilities of local emergency shelters in providing shelter and care for specialty care populations during a disaster.

The bill also establishes the task force on disaster issues affecting persons who are elderly and persons with disabilities to make recommendations on methods to more effectively assist such persons during a disaster

or emergency evacuation and to more effectively accommodate them in emergency shelters.

TDEM, in consultation with DSHS, must increase awareness of and encourage local government emergency response teams to use services provided by local volunteer networks available to respond during a disaster or emergency. To assist counties that lack access to a volunteer network, TDEM also must develop a plan to create and manage state-controlled volunteer mobile medical units in each public health region.

DSHS must collaborate with local medical organizations that represent licensed physicians who practice in a county or public health region to, among other items listed in the bill, provide up-to-date information on resources for physicians on disaster planning and encourage health professionals to advocate for disaster planning measures in health care facilities.

**SB 494** revises requirements in Government Code sec. 551.045 on exceptions to open meetings requirements in certain emergency situations. The bill allows a governmental body to temporarily suspend requirements in the Texas Public Information Act (Government Code ch. 552) on the handling of public information requests during certain emergencies.

*Open meetings.* SB 494 decreases from at least two hours to at least one hour the posting time for notice of an emergency meeting or emergency addition to an agenda of a governmental body in an emergency or when there is an urgent public necessity. The notice or supplemental notice must concern a meeting to deliberate or take action on the emergency or urgent public necessity.

The bill specifies that an emergency or urgent public necessity exists only if immediate action is required of a governmental body due to an imminent threat to public health and safety or a reasonably unforeseeable situation, including certain natural disasters, power or communication facilities failures, or certain acts of lawlessness or violence.

The special notice of an emergency meeting or addition of an emergency item to an agenda must be given to the news media at least one hour before the meeting is convened.

*Public information.* SB 494 establishes a period during which a governmental body may suspend the requirements of the Texas Public Information Act. The requirements do not apply to a governmental body during the suspension

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period if the body is currently impacted by a catastrophe and complies with the bill.

The bill defines “catastrophe” to mean a condition or occurrence that interferes with the ability of a governmental body to comply with public information requirements, including certain natural disasters, power or communication facilities failures, or certain acts of lawlessness or violence.

A governmental body that elects to suspend public information requirements must notify the Office of the Attorney General that it is impacted by a catastrophe and has elected to suspend the requirements during an initial suspension period. A governmental body must provide public notice of the suspension in a place readily accessible to the public and in each other location the governmental body is required to post open meeting notices.

## Supporters said

The bills related to disaster response would implement several recommendations from the Governor’s Commission to Rebuild Texas, allowing the state to respond more efficiently and effectively to future disasters.

HB 2320 would help the state coordinate communications more quickly and effectively during a disaster by requiring the Texas Division of Emergency Management (TDEM) to develop plans collaboratively to ensure that critical communications infrastructure remained operable immediately following a disaster. The bill also would develop strategies to strengthen other critical infrastructure, a major step toward adequately preparing the state against the impact of future disasters.

The bill would help ease the financial situation of those affected by a disaster by protecting the public from fraudulent business practices in the building trades after a disaster and requiring the promotion of utility bill payment assistance programs.

HB 2325 would improve disaster response by standardizing communications and ensuring that the most accurate and up-to-date information was sent out during and after disasters. While effective communication during a disaster is critical for disaster response efforts, current law insufficiently addresses the requirements for disaster-related communications. The bill would ensure local governments distributed consistent advice and information to citizens to avoid confusion and would leverage existing

resources to standardize communications across state and local levels, resulting in no state cost.

SB 6 would assist local governmental entities with emergency preparedness and disaster response, including by helping establish best practices for disaster response plans and emergency management training.

HB 366 would enable local food banks to buy the food needed to respond to disasters, helping them to sustain their support as communities recovered and rebuilt. Local food banks can source a greater variety of food faster and at a lower cost to the state than FEMA due to their infrastructure, experience responding to crisis, and unique relationships with the food industry in the state.

SB 982 would improve coordination of services following a disaster, especially medical care and sheltering opportunities for special care populations.

SB 494 would strike a balance between open government requirements and the ability of government officials to respond to natural disasters and other emergencies. Government transparency is critical, but emergency situations create exigent circumstances requiring redirection of resources to save lives. The bill would allow local governmental bodies to more quickly communicate during a disaster by easing the requirement for posting notice of a meeting. The news media would receive the one-hour notice, allowing time for them to cover the meeting.

Allowing a governmental body to suspend requirements for responding to public information requests during a catastrophe would help local officials prioritize the safety and well-being of constituents. Government buildings, equipment, and records can be damaged during a flood or other severe weather event, making it difficult to comply with requests. The involvement of the attorney general in monitoring local officials’ open government requirements during an emergency would protect against possible abuses.

While some have said the bill would broaden the circumstances under which a meeting could be considered an emergency by listing a variety of possible events, the current statutory language provides more latitude because it does not define what constitutes a “reasonably unforeseeable situation.” The listing of events would give context to the magnitude of an event that could trigger the bill’s provisions.

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## Critics said

HB 2325 could limit the ability of local governments and emergency response units to address the needs of individual communities during and after disasters by imposing top-down standards. Local entities should have discretion in how best to disseminate information to the public during disaster response.

The bill also would mandate creation of a mobile application that could require costly maintenance and updates. Instead, the bill should require the state to use a mobile application or platform currently in existence that would not require state funds to operate in the future.

SB 494 could hamper the ability of the news media to provide critical information to the public. Local officials have sufficiently broad authority to respond to emergency conditions under current law, which allows for a two-hour posting of a public meeting during an emergency. Current law also provides flexibility on deadlines for public information requests when government offices are closed.

The bill would provide too much latitude for local officials to declare an emergency for an event like a power outage or threat of violence that was not on par with a hurricane, major flood, or tornado. The bill also should require the attorney general to approve the suspension of public information requirements instead of merely being the recipient of a suspension notice from local officials.

## Notes

The HRO analyses of HB 2320 and HB 2325 and appeared in Part One of the April 10 *Daily Floor Report*.

The HRO analysis of HB 3668 appeared in Part Three of the April 30 *Daily Floor Report*.

The HRO analysis of SB 494 appeared in Part Two of the May 16 *Daily Floor Report*.

SB 6 and SB 982 passed on the Local, Consent, and Resolutions Calendar and were not analyzed in a *Daily Floor Report*.

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# Disaster recovery

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**HB 6 by Morrison, HB 5 by Phelan, HB 1307 by Hinojosa, HB 2330 and HB 2335 by Walle, HB 2310 by Vo, HB 2315 by E. Thompson, SB 289 by Lucio, HB 1152 by Bernal, SB 799 by Alvarado, HB 3175 by Deshotel**

*Effective September 1, 2019, unless noted*

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The 86th Legislature passed several bills related to disaster recovery based on recommendations from the Governor's Commission to Rebuild Texas. The governor established the commission in the aftermath of Hurricane Harvey to oversee response and relief efforts between state and local governments and to be involved in the rebuilding process. The bills address local, state, and federal recovery efforts, including debris management and removal, case management systems for state and federal assistance, temporary housing, and deceptive trade practices after a disaster.

**HB 6** requires the Texas Division of Emergency Management (TDEM) to develop a disaster recovery task force to operate throughout the long-term recovery period following natural and man-made disasters. The task force must provide specialized assistance for communities and individuals to address financial issues, available federal assistance programs, and recovery and resiliency planning to speed local recovery efforts. The task force must submit a report to the appropriate federal agencies listing each project that qualifies for federal assistance.

Each quarter, the task force must brief the Legislature, legislative staff, and state agency personnel on the response and recovery efforts for previous disasters and any preparation for potential future hazards, threats, or disasters.

**HB 5** requires TDEM to develop a catastrophic debris management plan and model guide for political subdivisions to use in the event of a disaster. The plan must provide certain information on preparing for debris removal before a disaster and include procedures for coordinating debris clearance and disposal, obtaining necessary equipment immediately after a disaster, and for the interaction between political subdivisions and state and federal agencies.

TDEM, in consultation with the Federal Emergency Management Agency (FEMA), must develop and publish a model contract for debris removal services to be used by political subdivisions after a disaster. TDEM must consult

with the comptroller to establish contracting standards and contractor requirements.

**HB 5** establishes a group to provide recommendations to the Legislature on removal of wet debris, including best practices for clearing it following a disaster and determining responsibility for that removal.

The bill also establishes a work group to make recommendations for minimizing the effects of local restrictions that impede disaster recovery efforts, including efforts to remove debris and erect short-term housing. The study must include an overview of official actions by political subdivisions and of requirements imposed by deed restrictions or property owners' associations on recovery efforts.

**HB 1307** requires TDEM to contract with a vendor to develop and maintain an electronic disaster case management system to be used during and after a disaster by persons, municipalities, or counties affected by a disaster, certain state agencies, and any appropriate federal agencies or other entity selected by the division. The system may allow the person to apply for disaster assistance from multiple sources.

The system must allow the affected person to control which other users have access to information the person submitted to the system. Any information collected or maintained by the system that could identify a person is confidential and is not subject to public information requirements, except for disclosure to a governmental body for disaster relief or recovery purposes.

**HB 2330**, effective May 24, 2019, requires the Health and Human Services Commission (HHSC) and TDEM to report to the Legislature on the feasibility of creating a state case management program and streamlined intake system for state and federal disaster assistance. HHSC and TDEM must determine the feasibility of developing a single intake form, an automated intake system for collecting the information, and a state case management system for disaster assistance similar to the FEMA system.

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HHSC and TDEM must coordinate with FEMA and other state and federal agencies to determine whether FEMA would accept the single intake form, the cost of developing the form and maintaining the system, and the cost of maintaining a state case management system. The commission and the division may implement the form and systems studied under the bill if they determine that the implementation would not result in any additional cost to the state.

**HB 2335**, effective June 14, 2019, requires HHSC to collaborate with local government officials to create a directory of local points of contact for the supplemental nutrition assistance program for disaster victims (D-SNAP), determine the best communication method between HHSC and local government officials regarding D-SNAP, and develop and maintain a list of potential in-person application sites for program benefits that meet federal requirements.

**HB 2310** requires the Texas Department of Motor Vehicles (TxDMV) and TDEM to coordinate with FEMA to ensure the department has information, including a vehicle identification number, necessary to apply required notation to the salvage title of a vehicle damaged by flood that has been repaired or salvaged using FEMA financial assistance.

**HB 2315** requires the Texas Department of Housing and Community Affairs to adopt rules for the application and automatic issuance of statements of ownership of manufactured homes purchased by federal agencies to provide temporary housing during emergencies. Under the bill, such homes are exempt from certain laws on manufactured home statements of ownership and manufacturers' certificates.

TxDMV must establish a process to automatically issue a title to a government agency for a travel trailer used to provide temporary housing in response to emergencies. The bill applies to travel trailers owned or operated by the United States or transferred to a state agency from the United States.

**SB 289** creates procedures for local housing recovery plans. It designates the General Land Office (GLO) as the state agency required to receive and administer federal and state funds appropriated for long-term disaster recovery, unless the governor designates a different agency.

Under the bill, a local government may adopt a local housing recovery plan for the rapid and efficient construction of permanent replacement housing after

a disaster. In developing the plan, it must seek input from community stakeholders and neighboring local governments.

A local government may submit a plan to the Hazard Reduction and Recovery Center at Texas A&M University for certification. GLO must accept a plan from the center unless it does not satisfy certification criteria, provide for the rapid and efficient construction of permanent replacement housing, or comply with applicable state and federal laws. An accepted plan is valid for four years. GLO must seek prior approval from FEMA and the U.S. Department of Housing and Urban Development for the immediate post-disaster implementation of its accepted local housing recovery plans.

**HB 1152** expands the list of actions that constitute the unlawful deceptive trade practice of taking advantage of a declared disaster to include selling or leasing lodging, building materials, or construction tools at an exorbitant or excessive price or demanding an exorbitant or excessive price for those items. The bill applies to disasters declared by the U.S. president and those declared by the governor and only to an act that occurs during a designated disaster period, as defined by the bill.

**SB 799**, generally effective June 10, 2019, creates a business advisory council to provide advice and expertise on actions state and local governments can take to help businesses recover from a disaster. The advisory council must advise TDEM on ways to help recovering businesses on the state resources and services needed to help them recover from a catastrophic loss of electric power, and on how to address inefficiencies in state or local disaster response affecting businesses and the economy.

**HB 3175** makes confidential certain identifying information of a person, household, business, or owner of a business that applies for state or federal disaster recovery funds. The street name and census block group of and the amount of funds awarded to a person or household are not confidential after the date funds are awarded.

## Supporters said

The bills related to disaster recovery would implement several recommendations from the Governor's Commission to Rebuild Texas, enabling the state to be better prepared to withstand future disasters.

HB 6 would support more effective coordination between state and local governments during disaster



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recovery. After Hurricane Harvey, chaotic state efforts to address local communities' urgent needs were complicated by a lack of available state and federal agency experts. HB 6 would create a task force of experts able to provide specialized assistance to communities and help early recovery efforts function more efficiently. This is important for rural communities that lack the resources, funding, and manpower to sustain long-term recovery efforts. The bill also would ensure that efforts to pursue federal funding for disaster-related projects were continued after any future disaster.

HB 5 would address the debris management challenges that state and local governments faced during the Hurricane Harvey recovery process, ensuring that local communities were better prepared to recover from future disasters. Having a developed catastrophic debris management plan and model contract for local jurisdictions would better position them to respond more quickly and would simplify Federal Emergency Management Agency (FEMA) reimbursement.

The bill also would provide for a necessary study of the complex issue of wet debris removal. Responsibility for removing the debris depends on its location, whether near tidal-influenced water, rivers and waterways, or other bodies of water. Multiple agencies have responsibilities for these waters, making identifying the responsible party and applicable law difficult.

Given the experiences of homeowners and state and federal agencies, it also is necessary to recommend ways to resolve the effects of local restrictions on recovery efforts. Some homeowners had difficulty with debris removal after Harvey, and in other cases FEMA and the General Land Office were prevented from locating short-term housing due to homeowners' associations regulations. The work group established by HB 5 would recommend ways to mitigate these challenges by considering input from all appropriate stakeholders and could solicit input from private associations, including homeowners' associations.

HB 1307 would require the creation of a statewide disaster case management system to better assist the Texas Division of Emergency Management (TDEM) in managing data, processing requests for federal assistance, and streamlining the collection of resources, staff, and status information from communities. The bill would help communities rebuild by establishing a centralized way for disaster victims to apply for assistance and providing a tool for the state to coordinate recovery services to those in need.

HB 2330 would investigate the feasibility of creating a state disaster relief case management system, which could help the Health and Human Services Commission (HHSC) and TDEM cooperate with the federal government in expediting recovery efforts. While many organizations indicate that they offer case management services in Texas, no state agency or entity offers disaster case management. FEMA offers a structured disaster case management program, but the rollout of these services after a major disaster often is slow and can be an obstacle to disaster recovery efforts.

The bill could help disaster survivors navigate the requirements for state and federal disaster assistance by streamlining the application process and intake system.

HB 2335 would better prepare the state to provide needed food assistance to low-income Texans who experienced significant losses as a result of a natural disaster. After Hurricane Harvey, HHSC faced difficulties finding sites that met federal requirements for the supplemental nutrition assistance program for disaster victims (D-SNAP) in-person application process. HB 2335 would require HHSC to work with local authorities to develop an inventory of appropriate D-SNAP in-person application sites, resolving logistical issues prior to a disaster.

Because current federal law requires potential D-SNAP recipients to apply in person for authentication purposes, creating a pre-registration system for potential recipients would be ineffective and redundant. D-SNAP is not designed to provide immediate relief to families upon evacuation but rather to assist people moving back into their homes after a disaster to restock after significant losses. While prioritizing care for evacuees in the immediate aftermath of a disaster is important, it is not the role of D-SNAP.

HB 2310 would ensure TDEM, FEMA, and the Texas Department of Motor Vehicles (TxDMV) coordinated to capture vehicle identification numbers (VIN) of flood-damaged vehicles so their titles could receive the proper notation. After Hurricane Harvey, FEMA did not collect the VIN of flood-damaged vehicles for which it provided assistance, impeding TxDMV's ability to attach the required notation. This title notation is necessary so subsequent buyers know a vehicle was flooded.

HB 2315 would close a gap in the titling process of temporary housing transferred from FEMA to state agencies by issuing titles and statements of ownership automatically. To accommodate those displaced, FEMA

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buys travel trailers for temporary housing units that are exempt from titling requirements under federal law. When FEMA transfers the trailers to state agencies, the state agencies must secure a valid title, which is difficult because there is no owner of record. The bill also would provide proper titling for trailers so the state could issue license plates exempt from fees.

SB 289 would better equip local governments to meet their communities' specific needs after a disaster by encouraging coordination in the development of local housing recovery plans.

SB 799 would implement a recommendation by the General Land Office in a report on lessons learned from the agency's response to Hurricane Harvey that state and local officials should seek the expertise of the business community on disaster recovery.

HB 3175 would protect disaster victims from identity theft by making sensitive personal information included in an application for disaster recovery funds confidential. Identity thieves use sensitive personal information found in publicly available databases to commit fraud and other crimes, and vulnerable disaster victims should be better protected. The bill also would ensure transparency and accountability in the dispersal of recovery funds by allowing the release of census block group information after funds were awarded.

## Critics said

HB 5 would not align with recommendations from the Governor's Commission to Rebuild Texas that private associations be included as members of the work group studying local restrictions and disaster recovery efforts, leaving out important input from affected parties, including homeowners' associations.

HB 2335 should include a pre-registration process for people living in disaster areas to ensure more efficient enrollment when a disaster occurred. The bill also should prioritize evacuees in shelters for D-SNAP enrollment. Evacuees are generally the most impacted by the disaster and need the most assistance to recover fully.

HB 3175 could make it difficult to track federal disaster recovery funds by preventing access to necessary information. Releasing the street name and amount of funds after they were awarded would not support an assessment of who applied for versus received assistance,

reducing transparency and accountability in the dispersal of disaster funds.

## Notes

The HRO analyses of HB 6, HB 5, HB 2330, HB 2335, HB 2310, and HB 2315 appeared in Part One of the April 10 *Daily Floor Report*.

The HRO analysis of HB 3175 appeared in Part One of the April 24 *Daily Floor Report*, and the HRO digest of HB 1307 appeared in Part Two of the April 25 *Daily Floor Report*.

The HRO digest of SB 289 appeared in Part One of the May 20 *Daily Floor Report*, and the digest of SB 799 appeared in Part One of the May 21 *Daily Floor Report*.

HB 1152 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

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# Disaster relief

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**SB 6 by Kolkhorst, SB 7 by Creighton, HB 3070 by K. King,  
HJR 34 and HB 492 by Shine, SB 812 by Lucio, SB 443 by Hancock**

*Effective September 1, 2019, unless noted*

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The 86th Legislature enacted several bills to provide financial relief to local governments and property owners after a disaster. Some bills establish grants and loans for local government recovery projects while others relate to property tax exemptions or reappraisals for property damaged by a disaster.

**SB 6** creates the Disaster Recovery Loan Account as an account in the general revenue fund that is administered by the Texas Division of Emergency Management (TDEM). Money in the account may be used only to provide short-term loans to eligible political subdivisions for disaster recovery projects.

The bill allows a county, city, or school district located wholly or partly in an area declared to be a disaster area by the governor or the president of the United States to apply to TDEM for a loan if:

- the political subdivision submits its operating budget from the most recent fiscal year to TDEM;
- the political subdivision submits an application for a loan from the Federal Emergency Management Agency's (FEMA) community disaster loan program;
- an assessment of damages due to the disaster has been conducted in the political subdivision; and
- TDEM, in consultation with FEMA, determines that the estimated cost to rebuild the political subdivision's damaged infrastructure is greater than 50 percent of its total revenue for the year.

A loan from the account must be made at or below market interest rates and for a term of up to 10 years. Loan proceeds must be expended solely for disaster recovery projects.

If the term of a loan exceeds two years, the state auditor must conduct a limited audit of the political subdivision on the second anniversary of the date the loan was received to determine whether it can repay the loan. TDEM may forgive a loan if the state auditor determines that the political subdivision is unable to repay it.

**SB 7**, generally effective June 13, 2019, creates the Hurricane Harvey Account as an account in the Texas Infrastructure Resiliency Fund, a special fund outside the general revenue fund. The Texas Water Development Board (TWDB) may use the account only to provide money to TDEM to finance projects related to Hurricane Harvey. The financing may include grants to political subdivisions to serve as nonfederal matching funds for certain federal programs. It also could be used to provide loans to political subdivisions at or below market interest rates for certain costs associated with flood projects. A grant or loan from the Hurricane Harvey Account may not provide more than 75 percent of the cost of a project paid with money other than federal funds.

TWDB, in collaboration with TDEM, must establish a point system for prioritizing flood projects. When awarding points, the board must give the highest consideration to a project that will have a substantial effect, including a project that is recommended by the TDEM director and meets an emergency need in a disaster area.

An application for funds may be approved only if TDEM finds that all requirements were met, the application demonstrated cooperation among applicable political subdivisions, and the taxes or revenue pledged by the applicant will be sufficient to meet all obligations. Principal and interest payments on loans may be deferred for up to 10 years or until construction of the flood project is completed, whichever is shorter.

Money from the Hurricane Harvey Account may be awarded to several political subdivisions for a single flood project. A political subdivision that receives a grant also may receive a loan.

The account expires September 1, 2031, and the remaining balance will be transferred to the Flood Plan Implementation Account.

**HB 3070** allows a volunteer fire department whose equipment is damaged or lost in responding to a declared state of disaster to submit a request for emergency

assistance from the rural volunteer fire department assistance fund. The request may be for the repair or replacement of damaged or lost equipment and for the purchase of a machine to clean personal protective equipment.

Under the bill, at least 10 percent of appropriations in a fiscal year from the fund for volunteer fire departments must be allocated to emergency assistance, unless the amount requested is less than the amount allocated.

**HJR 34** amends the Texas Constitution to allow the Legislature by general law to entitle a person who owns property in a governor-declared disaster area to a temporary exemption from property taxes by a political subdivision for a portion of the property's appraised value. The law may provide that if the disaster was first declared on or after the date the political subdivision adopted a tax rate for the year, a person would be entitled to the exemption for that year only if the exemption was adopted by the governing body of the political subdivision.

**HB 492**, effective January 1, 2020, is the enabling legislation for HJR 34. The bill entitles a property owner to a tax exemption for a portion of the appraised value of property that is located in a governor-declared disaster area and that is at least 15 percent damaged by the disaster.

If the governor first declares a disaster on or after the date a taxing unit adopted a tax rate for that year, a person would not be entitled to the exemption unless the governing body of the taxing unit adopted the exemption. The governing body of a taxing unit has 60 days after the date the governor first declares territory in the unit to be a disaster area to adopt an exemption. A person who qualifies for an exemption under the bill must apply for the exemption within a specified time frame.

*Damage assessment.* Upon receiving an exemption application, the chief appraiser must determine if any qualified item of property that is the subject of the application is at least 15 percent damaged by the disaster and assign each item a damage assessment rating. Damaged property is assigned ratings of:

- Level I, if the property is between 15 percent and 30 percent damaged, meaning it suffered minimal damage and can be used as intended;
- Level II, if the property is between 30 percent and 60 percent damaged, meaning it suffered nonstructural damage and the waterline is less than 18 inches above the floor;
- Level III, if the property is at least 60 percent

damaged but not a total loss, meaning it suffered significant structural damage requiring extensive repair or the waterline was at least 18 inches above the floor; or

- Level IV, if the property was a total loss, meaning that repair of the property is not feasible.

To make this assessment, the chief appraiser may rely on information provided by a county management authority, FEMA, or any other source the appraiser considers appropriate.

*Exemption amount.* The amount of the exemption for an item of qualified property is determined by multiplying the property's appraised value for the tax year in which the disaster occurred by:

- 15 percent, if the property is assigned a Level I rating;
- 30 percent, if the property is assigned a Level II rating;
- 60 percent, if the property is assigned a Level III rating; or
- 100 percent, if the property is assigned a Level IV rating.

The exemption amount is prorated for the number of days remaining in the tax year after the date on which the governor first declared the disaster.

*Recalculation of taxes.* If a property owner qualifies for the exemption after the tax due on qualified property had been calculated, the assessor for each taxing unit that adopted the exemption is required to recalculate the tax due and correct the tax roll.

*Protests.* A property owner may protest before an appraisal review board the chief appraiser's modification or denial of the owner's application for an exemption or the appraiser's determination of the appropriate damage assessment rating.

*Expiration.* The exemption expires on January 1 of the first tax year in which property is reappraised.

**SB 812**, effective May 7, 2019, expands the definition of "disaster recovery program" to include a program administered by a political subdivision and funded with community development block grant disaster recovery money authorized by federal law.

The General Land Office and each political subdivision that administers a disaster recovery program

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must provide to the chief appraiser of each appraisal district a list of each replacement structure constructed since January 1, 2018, under the program. The chief appraiser then must adjust the appraisal records for the appraisal district, deliver a corrected notice of appraised value to an affected property owner if necessary, and notify the assessor and collector of each taxing unit.

**SB 443**, effective June 4, 2019, extends from two to five years the maximum time the owner of certain damaged property may continue receiving a residence homestead property tax exemption while the owner constructs a replacement structure on the land if the property is located in a governor-declared disaster area and the structure is rendered uninhabitable or unusable by the disaster. To continue to receive the exemption, the property owner must begin building the replacement structure within the five years after the owner ceases to occupy the former structure as the principal residence.

## Supporters said

Texas needs to provide financial relief to communities harmed by disaster, including low-interest loans and grants for local governments to rebuild and plan for future disasters and property tax relief for Texans with damaged property.

**SB 6** would establish the Disaster Recovery Loan Program to provide immediate relief to local governments with major infrastructure damage after a disaster. The program especially would help small communities, such as those that struggled with funding in the aftermath of Hurricane Harvey. Local governments may not have a large enough budget to meet even a 10 percent matching requirement for federal recovery funds, preventing them from receiving the aid they need to rebuild.

**SB 6** and the appropriation made in **HB 1** to the program would not impose a burden on taxpayers but would appropriate funds at the discretion of the Legislature. Concerns that the Federal Emergency Management Agency (FEMA) would be involved in local spending decisions are unfounded because FEMA already is involved in the disaster declaration process to assess damage and clarify the need for federal assistance.

By establishing the Hurricane Harvey Account, **SB 7** would provide local governments with the money required to access recovery aid from the federal government. This financial support is critical to continue the Hurricane Harvey recovery process. The state contribution would

reduce the burden on local governments and could provide other necessary services such as police, fire, and trash pickup. Local matching funds for FEMA grants also tend to earn large returns on investment.

**HB 3070** would expand the rural volunteer fire department assistance program so that the grants could be used to help pay for the repair or replacement of equipment damaged or lost in a disaster.

**HJR 34** is necessary to enable the Legislature to pass laws entitling individuals to a temporary tax exemption for properties damaged by a disaster. **HB 492**, the enabling legislation for **HJR 34**, would provide such an exemption, giving taxing units a less expensive, easier to administer, and more easily understood method for providing relief to taxpayers harmed by a disaster than the current method of disaster reappraisal.

Under the bills, property owners would be entitled to a temporary exemption after a disaster. If the disaster occurred after tax rates were set, local governments could decide whether to allow the exemption. The exemption amount would be based on damage assessments provided by FEMA or another appropriate source. This method would allow appraisers and taxing units to save time and money and avoid duplicative assessments or reappraisals at potentially hazardous properties. Taxpayers are more familiar with property tax exemptions than with reappraisals, and an exemption would provide taxpayers with more immediate relief.

**SB 812** would allow current and future natural disaster victims to benefit from the appraisal limit on replacement structures by expanding the eligibility for this limit to include homeowners served by any disaster recovery program administered by a political subdivision that receives certain federal funds. Allowing all homeowners who are forced to rebuild due to natural disasters to benefit from the appraisal limit would reduce the property tax burden on these individuals and prevent them from being taxed out of rebuilt homes.

**SB 443** would expand the window of time for homeowners to receive a residence homestead exemption for property rendered unusable as the result of a disaster, ensuring that homeowners were entitled to the exemption even in the aftermath of a major natural disaster when labor shortages can cause extensive construction delays.

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## Critics said

SB 6 and the contingent appropriation made by HB 1 improperly would use taxpayer money from across the entire state for a program that only affected certain local governments. The bill also would involve FEMA in the loan eligibility process, which would be inappropriate because the federal government should not be involved in local spending decisions.

HJR 34 and HB 492 would replace the current post-disaster property reappraisal process with a mandatory tax exemption for local governments that had not yet adopted a tax rate for the year, possibly depriving them of necessary funds and removing local discretion. When a local government experiences a disaster, it must continue to provide essential services while recovering costs from disaster response, such as damaged equipment and employee overtime. By entitling property owners to a tax exemption following a disaster, HJR 34 could prevent local governments from gaining adequate funds to provide services and could be especially harmful to governments with small budgets. The Legislature should allow rather than require the exemption in order to give communities the ability to make informed decisions based on their budgetary needs.

## Other critics said

HJR 34 and HB 492 would not go far enough to ensure property tax relief for all taxpayers harmed by disasters. Under the bills, individuals would not be entitled automatically to a property tax exemption if the disaster was declared after the tax rate had already been adopted. This means property damaged by storms in October or November could be denied relief if the taxing unit decided not to adopt an exemption. Rather than requiring exemptions only for properties damaged by disasters that occurred before the tax rate was set, all damaged properties should receive an automatic property tax exemption.

## Notes

SB 6 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

The HRO analysis of SB 7 appeared in Part One of the May 16 *Daily Floor Report*. The HRO digest of HB 3070 appeared in Part Two of the April 17 *Daily Floor Report*.

The HRO analysis of HB 492 appeared in Part Two of the April 16 *Daily Floor Report*, and the analysis of HJR 34 appeared in Part One of the April 17 *Daily Floor Report*.

The HRO analysis of HB 1842 by S. Thompson, the House companion bill for SB 812, appeared in Part Two of the April 10 *Daily Floor Report*.

The HRO digest of SB 443 appeared in Part Three of the May 16 *Daily Floor Report*.

**HB 1** by Zerwas, the general appropriations act, appropriates \$10 million in general revenue for the Disaster Recovery Loan Program in fiscal 2020-21.

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# Disaster-related appropriations

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## SB 500 by Nelson

*Effective June 6, 2019*

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**SB 500**, the supplemental budget bill for fiscal 2018-19, appropriated money for Hurricane Harvey response and recovery and for disaster prevention projects. The bill requires any state agency or public institution of higher education that receives reimbursement from the federal government, an insurer, or other source to reimburse appropriations from the Economic Stabilization Fund (ESF) in an amount equal to either the amount appropriated and spent from the fund for that expenditure or the amount reimbursed by the other source for that expenditure.

**Aid for Harvey-affected schools.** SB 500 appropriated \$806.5 million from the ESF to the Texas Education Agency (TEA) for the Foundation School Program (FSP) for hurricane-related expenses. These expenses included disaster remediation, student relocations to other school districts, adjustments to school district property values, and reductions of recapture payments owed to the state by certain property-wealthy school districts that incurred disaster remediation costs.

The bill also appropriated \$636 million from the ESF to TEA for increased state costs under the FSP resulting from the reduction in property values associated with the hurricane.

**Higher education institutions.** The bill appropriated from the ESF \$26.1 million to several components of the University of Houston System, \$13.1 million to the Lone Star College System, and \$9.5 million for Lamar University, Lamar Institute of Technology, and Lamar state colleges for hurricane-related expenses and property damage. SB 500 also appropriated \$2.5 million from the ESF to the Texas A&M Forest Service.

The bill appropriated \$10.2 million from the ESF to the University of Texas at Austin for storm damage prevention and compliance and the mitigation of damages to its Marine Science Institute related to Hurricane Harvey.

**Texas Infrastructure Resiliency Fund.** SB 500 appropriated \$857 million from the ESF to the comptroller for immediate deposit into the Texas

Infrastructure Resiliency Fund, created through SB 7 by Creighton. Of that amount, SB 500 directs to the Texas Water Development Board (TWDB):

- \$273 million to provide matching funds for projects sponsored by political subdivisions and approved for the Hazard Mitigation Grant program administered by the Federal Emergency Management Agency (FEMA); and
- \$365 million to provide matching funds for projects sponsored by political subdivisions and approved for the Public Assistance grant program administered by FEMA.

Of the Public Assistance grant matching funds, \$30 million may be used only to provide a grant to Harris County to remove accumulated siltation and sediment deposits located at the confluence of the San Jacinto River and Lake Houston.

Of the \$857 million, the comptroller must deposit at least \$47 million into the Floodplain Management Account in the Texas Resiliency Fund. SB 500 directs \$47 million from the Floodplain Management Account to TWDB for developing and updating flood risk maps to support a state flood plan.

**Flood Infrastructure Fund.** The bill appropriated \$793 million from the ESF to the comptroller to immediately deposit to the credit of the Flood Infrastructure Fund, which was created through SB 7 by Creighton and HJR 4 by Phelan and approved by voters on November 5, 2019. SB 500 directs the \$793 million to TWDB for flood-related infrastructure projects.

**General Land Office.** The bill appropriated \$23.6 million from the ESF to the General Land Office (GLO) for the removal of vessels and the repair or replacement of structures and equipment damaged by Hurricane Harvey. An additional \$2 million in general revenue dedicated funds was appropriated for the removal of abandoned vessels.

SB 500 appropriated \$2.1 million from the ESF to GLO for full-time equivalent employees assigned to

build emergency short-term housing related to Hurricane Harvey if federal grants for this purpose were not received by the effective date of the bill.

The bill appropriated \$200 million from the ESF to GLO to provide state matching funds for studies and projects planned by the Army Corps of Engineers.

**Office of the Governor.** SB 500 appropriated \$100 million from the ESF to the Trusteed Programs within the Office of the Governor for disaster grants.

**Department of Housing and Community Affairs.** The bill appropriated \$4 million from the ESF to the Department of Housing and Community Affairs to provide affordable rental housing in areas most affected by natural disasters.

**Other state agency expenses.** SB 500 appropriated from the ESF \$97 million to the Department of Public Safety for operation expenses related to Hurricane Harvey and other natural disasters, \$8.9 million to the Texas Workforce Commission for vocational rehabilitation services related to the hurricane, and \$8 million to the Texas Parks and Wildlife Department to repair structures or equipment damaged by the hurricane.

The bill appropriated from the ESF \$110 million to the Health and Human Services Commission and \$38.6 million to the Texas Department of Criminal Justice to replace funds transferred to disaster assistance programs.

## Supporters said

SB 500 would use the Economic Stabilization Fund (ESF or “rainy day fund”) responsibly to mitigate damage from Hurricane Harvey, which devastated large areas of Texas in August 2017 and was among the costliest storms in American history. It would be appropriate to use the state’s rainy day fund for disaster-related needs, including flood prevention projects and immediate funding for certain entities, some of which are still waiting for disaster assistance from the federal government or insurance payments to repair damaged facilities. Requiring agencies and institutions of higher education to pay back the ESF if they later receive reimbursements from other sources, such as from the federal government or from insurance, would ensure that the ESF funds were used only when no other funding source was available. Several of the appropriations in SB 500 would repay agencies whose available cash was used when Harvey-related expenses needed to be paid after the storm and would provide matching funds for certain

Federal Emergency Management Agency programs and Army Corps of Engineers studies and projects.

**Resiliency, infrastructure funds.** The appropriations made by SB 500 to the resiliency fund and infrastructure fund would be one-time expenses for necessary flood infrastructure and would be made appropriately through the ESF. Infrastructure needs in the state must be met to prepare for future flood events.

**Matching funds.** Appropriations in SB 500 would provide the portion of the state’s share of funding that it can afford this biennium for needed engineering projects related to Hurricane Harvey and disaster recovery and mitigation. The bill also would provide funds to the GLO for coastal projects and necessary repairs resulting from Hurricane Harvey. The Federal Emergency Management Agency is expected to reimburse some of these funds after the work is completed.

## Critics said

Although SB 500 would fund many required and disaster-related expenses, some of the expenditures might be unnecessary.

**Resiliency, infrastructure funds.** SB 500 would improperly use the ESF to provide \$793 million to the Flood Infrastructure Fund and \$857 million to the Texas Infrastructure Resiliency Fund. The ESF should be used only for disaster response or relief or for other one-time expenses. Because the infrastructure fund would be an ongoing state program, the money to support it should come from general revenue during the normal budgeting process.

**Matching funds.** Studies and projects of the Army Corps of Engineers that SB 500 would fund are still in the planning phase. It is unclear whether all the money appropriated for state matching funds for these projects would be needed.

## Notes

The HRO analysis of SB 500 appeared in the March 27 *Daily Floor Report*.



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# Elections

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*Finally approved		

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# Requiring election cybersecurity training

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## HB 1421 by Israel

*Effective September 1, 2019*

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**HB 1421** requires certain Secretary of State's Office personnel and county election officers to participate in cybersecurity training and assessments related to the security of election infrastructure.

**Secretary of state.** The bill requires the secretary of state to define classes of protected election data and establish best practices for identifying and reducing risk to the electronic use, storage, and transmission of election data and the security of election systems. The secretary of state must train appropriate personnel in the Secretary of State's Office on best practices annually and train county election officers upon request.

If the secretary of state becomes aware of a cybersecurity breach that has impacted election data, the secretary must notify appropriate legislative committees with jurisdiction over elections immediately.

**County election officers.** HB 1421 requires county election officers to request cybersecurity training from the secretary of state annually. The secretary of state must pay the costs of this training with available state funds. County election officers also must request assessments of their election systems if the secretary of state recommends them and if the necessary funds are available. If these officers become aware of a cybersecurity breach that impacts election data, they must notify the secretary of state immediately.

The bill requires county election officers to implement cybersecurity measures to ensure that all devices with access to election data comply with the cybersecurity rules adopted by the secretary of state, to the extent that state funds are available.

### Supporters said

HB 1421 would strengthen the state's election infrastructure by requiring all counties to participate in the secretary of state's cybersecurity training and receive certain risk assessments of their work environments if the necessary funds were available. The bill would extend participation requirements to some counties that previously had declined to participate in such programs

offered by the secretary of state because of concerns about how to pay to fix problems that arose or because the counties did not believe they were vulnerable to attacks.

The bill would not place a financial burden on counties because federal funds received in connection with the federal Help America Vote Act are earmarked for cybersecurity through the Secretary of State's Office. Many cybersecurity programs currently are offered to counties free of charge using this funding. The bill would help reduce the risk of data breaches and other cybersecurity incidents that could present significant costs.

### Critics said

HB 1421 would require the state to pay for unnecessary cybersecurity trainings and assessments. Election systems are not connected to the internet, and the state's election system has never been hacked. Voter rolls are connected to the internet, but the information contained in voter rolls is largely public information already.

### Notes

The HRO analysis of HB 1421 appeared in Part Two of the April 15 *Daily Floor Report*.

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# Modifying election rules; creating and increasing offenses

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## SB 9 by Hughes

*Died in House Calendars Committee*

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**SB 9** would have increased the criminal penalties for certain election offenses, created new offenses, modified the rules for poll watchers and voters' assistants, revised countywide polling place location requirements, granted the attorney general access to certain voter information, and established an auditable voting system pilot program.

**Criminal penalties.** The bill would have enhanced penalties for existing election offenses, including those for knowingly making false statements on a voter registration application, for watchers retaliating against voters, and for unlawfully assisting a voter.

The bill would have created new misdemeanor offenses. It would have been a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) to impede a walkway, sidewalk, parking lot, or roadway within 100 feet of a polling place in a manner that hindered someone from entering the polling place. It also would have been a class B misdemeanor for a person to take a ballot from a voter without the voter's permission. If the person were a poll watcher, the offense would have been a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

SB 9 would have required presiding election judges to confirm that public counters on voting machines were reset to zero before polls opened and to print tapes to be signed by election judges and, if present, representatives of political parties, showing that the counters were set to zero. The failure of presiding judges to comply would have been a class B misdemeanor.

Before polls closed and before voting system equipment could be removed from polling places, presiding judges would have had to verify and document the tally on voting machines' public counters and print and sign three copies of the verification. Watchers could have requested to inspect and sign the copies or retain copies for their records. The failure of presiding judges to comply with these requirements would have been a class B misdemeanor. Counties that participated in countywide

polling could have applied to the secretary of state for exemption.

It would have been sufficient to establish that individuals had knowledge of their ineligibility to vote if they were aware of the facts or circumstances causing the ineligibility. It would not have been a defense to prosecution that a ballot was not finally counted, and it would have been an affirmative defense to prosecution that a voter had cast or attempted to cast a provisional ballot.

The bill would have increased the statute of limitations for an election-related felony offense from three to five years from the commission of the offense and established certain defenses to prosecution, including for law enforcement personnel acting in certain capacities.

**Voting eligibility.** Voter registration applications could not have been accepted if, at the time applicants received the applications, boxes on the applications were already marked to indicate that applicants were U.S. citizens and would be 18 or older on Election Day.

**Watchers.** The bill would have allowed poll watchers to be appointed to serve at the meeting places of signature verification committees and inspect forms submitted by individuals assisting voters at these places and at the meeting places of early voting ballot boards. Watchers would have been allowed to use mechanical or electronic devices to record the counting of ballots.

**Assistants.** SB 9 would have required individuals who transported at least three voters to a polling place for curbside voting to complete and sign a form, prescribed by the secretary of state, with the individuals' names, addresses, and other information about how they were assisting the voters. This requirement would not have applied to individuals transporting their family members.

The bill also would have required individuals who helped voters mark their ballots to complete forms stating their names, addresses, and relationships to the voters.

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The forms, prescribed by the secretary of state, would have had to be included on carrier envelopes for individuals to vote by mail or submitted to election officers before voters could vote in person. Election officers could have made copies of these forms and delivered them to the secretary of state.

**Countywide polling places.** SB 9 would have revised requirements for calculating the minimum number of polling places in counties that participate in the countywide polling place program. For elections held on the November general election date in even-numbered years, counties would have been required to maintain a number of countywide polling places that was at least 80 percent of the number of precinct polling places located in each county.

The bill also would have established rules for determining where to open countywide polling places. Counties with fewer than 1 million people would have had different rules than counties with 1 million or more people.

**Access to voter information.** SB 9 would have given the attorney general electronic access to the statewide computerized voter registration list. It also would have required appropriate state or local officials and agencies to provide technological security measures to prevent unauthorized access to this list.

The bill would have allowed the secretary of state to disclose voters' Social Security numbers and dates of birth to other states and jurisdictions for the purposes of the interstate voter registration crosscheck program. The secretary of state would have been required to adopt best practices for maintaining the security of elections and restricting access to elections infrastructure and systems to authorized personnel.

**Auditable voting systems.** General custodians of election records would have been required to conduct risk-limiting audits for selected statewide races or measures within 24 hours after all ballots had been counted in an election. This requirement would have applied only to elections that occurred after August 31, 2024, that contained a race or measure that was voted on statewide and that used a voting system with paper records that could be read by voters. The secretary of state would have had to select the precincts and the offices or propositions to be counted.

The secretary of state could have appointed certain personnel to assist with the audits and would have had to adopt rules for procedures to implement them.

The bill would have required the secretary of state to conduct a pilot program that studied the risk-limiting audit program in up to five counties, including at least one county with a population of at least 500,000. After each election conducted under the pilot program, the secretary of state would have had to send a report to the Legislature evaluating the program and recommending whether the Legislature should delay statewide implementation.

**Election contests.** SB 9 would have expanded the venue for election contests for statewide offices from Travis County to include the counties where candidates resided at the time of an election.

In contests involving certain allegations of election fraud, contestants would have had to prove by a preponderance of evidence that contestees, agents of contestees, or individuals acting on their behalf and with their knowledge had committed the fraud. Contestees would be liable to the state for civil penalties of \$1,000 for each violation.

**Counting votes.** SB 9 would have required counting station managers and presiding judges of counting stations to develop a protocol under which no electronic devices capable of being connected to the internet could be inside a central counting station. Cellular telephones or equipment necessary to count votes could have been permitted if they were not connected to the internet.

Automatic recounts would have been required for precincts in which the results of the election showed that the number of votes cast in that precinct exceeded the number of registered voters in the precinct.

**Posting information online.** County clerks, within 24 hours after completing county election returns, would have had to post on county websites the number of votes cast in the county and the number of registered voters in the county.

## Supporters said

SB 9 would strengthen election integrity by establishing mechanisms to ensure that all votes cast were legitimate and that there were not restrictions on eligible voters.

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**Increasing criminal penalties.** Increasing existing criminal penalties for certain illegal election activities and establishing new offenses would deter these crimes and punish them appropriately.

**Assistants.** By establishing new requirements for those who assist voters, SB 9 would ensure that voters could cast ballots freely and without improper assistance. The bill would not discriminate against any class of individuals that depended on assistants to vote.

**Recordings.** Allowing watchers to record the ballot counting process on their cellphones would increase transparency. Voters' privacy would be protected because the bill would impose limits on recordings, such as rules that recording devices could be used only at central counting stations and could not be connected to the internet.

**Countywide polling places.** SB 9 would provide a fair and mathematical way to apportion countywide polling places throughout counties based on the number of registered voters in certain areas and would help provide adequate access to voting. This would help ensure that all voters across the county had equal opportunity to vote.

**Attorney general.** SB 9 would allow the attorney general access to more detailed information in the electronic voter database needed to conduct criminal investigations into violations of election laws.

## Critics said

SB 9 would not strengthen election integrity and would impose requirements that could suppress certain voters' rights.

**Increasing criminal penalties.** SB 9 would impose unfair penalties for certain election offenses, especially those committed by new voters and those with limited English proficiency who made mistakes on their voter registration applications or election workers who innocently forgot to complete certain tasks. The bill's harsh penalties only would serve to deter individuals from registering to vote or from becoming election workers at a time when there already are election worker shortages.

**Assistants.** SB 9 could discourage voters with disabilities, elderly individuals, and their assistants from participating in elections. Certain individuals could decline to assist voters with disabilities because they were afraid of giving cues and gestures to these voters that could

be misunderstood by poll workers as unlawfully assisting or coaxing voters. Those who transported more than three nonrelated voters to the polls for curbside voting, a form of voting often used by elderly individuals and people with disabilities, could be discouraged from doing so because of additional requirements imposed on them.

**Recordings.** The bill could violate voters' privacy by allowing poll watchers to record the ballot counting process on their cellphones. These poll watchers could capture sensitive information on their phones if, in the process of recording ballot counting, the poll watchers also captured footage of ballot booths.

**Countywide polling places.** SB 9 could prevent counties from being responsive to the needs of certain voters. The bill could reduce the number of polling places in areas in which there were high populations of people of color and fewer registered voters. The system established by the bill would ignore important factors such as geography and could force some individuals to travel greater distances to vote.

**Attorney general.** SB 9 would unnecessarily grant the attorney general immediate access to certain election information. The secretary of state should allow access to this election information only when there was a demonstrated need.

## Notes

SB 9 died in the House Calendars Committee and was not analyzed in a *Daily Floor Report*.



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# General Government

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\*Finally approved

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# Raising the age to 21 to purchase tobacco products

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## SB 21 by Huffman

*Effective September 1, 2019*

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**SB 21** raises the legal age to buy cigarettes, e-cigarettes, and tobacco products from 18 to 21, with an exception for individuals in the state or federal military forces. The bill does not apply to a product approved by the U.S. Food and Drug Administration (FDA) for use in the treatment of nicotine or smoking addiction that is labeled with a “Drug Facts” panel in accordance with FDA regulations.

The bill makes it an offense for a person younger than 21 years old to possess, purchase, consume, or accept a cigarette, e-cigarette, or tobacco product or to make a false representation of the individual’s age to obtain a tobacco product, punishable by a maximum fine of \$100. The prohibitions on individuals younger than 21 years old purchasing or attempting to purchase tobacco products do not apply to individuals born on or before August 31, 2001.

On conviction of an individual for such an offense, the court would have to give notice that the individual could apply to have the individual’s conviction expunged on or after the individual’s 21st birthday. It would be an exception to the offense that the individual was younger than 21 years old and:

- possessed the cigarette, e-cigarette, or tobacco product in the presence of an employer, if possession or receipt of those products was required in the performance of the employee’s duties;
- was participating in an inspection or test of compliance with the law; or
- was at least 18 years old, was on active U.S. or state military duty, and presented a valid military identification card upon purchase.

SB 21 also makes it a class C misdemeanor (maximum fine of \$500) to sell or give a tobacco product to a person younger than 21 years of age or to a person who intends to deliver a tobacco product to a person younger than 21.

The bill removes a justice or municipal court’s authority to order the suspension or denial of a driver’s license or permit in connection with e-cigarette and tobacco use by minors.

## Supporters said

SB 21 would improve public health and help prevent tobacco-related deaths by limiting access to cigarettes, tobacco products, and e-cigarettes for adolescents and those under 21 years of age. Tobacco use is the leading cause of preventable death in the United States, and thousands of Texans who began smoking before turning 21 could die prematurely if current trends continue. This bill would limit the economic and public health costs of tobacco use in Texas by widening the gap between young Texans and the ability to purchase tobacco products.

Currently, younger individuals may acquire cigarettes and e-cigarettes from their 18-year-old peers in high school. A large number of high-school students who smoke acquire tobacco products in this way. By raising the age of legal purchase to 21, this bill would increase the social gap between middle and high school students and those legally able to purchase tobacco products, reducing the social availability of these products for underage consumers.

Although 18-year-olds can join the military and vote, the choice to serve one’s country or perform a civic duty should not be compared with the legal ability to buy an addictive product. The goal of the bill is to reduce smoking among individuals younger than 18. Minors are becoming addicted to nicotine due to a supply-chain in schools. SB 21 would disrupt this by raising the legal age of tobacco purchase. A similar logic already exists with respect to purchasing alcohol, the legal age for which is 21, not 18. The greatest health benefits to the public would be observed by raising the age to 21, not to 19, as some have suggested.

E-cigarettes should not be excluded from the bill because they are tobacco delivery devices and contain nicotine, which is highly addictive. E-cigarettes have not been around long enough to have robust studies on the link between their use and premature death, but the risks of nicotine and tobacco are well known.



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## Critics said

SB 21 would unnecessarily regulate adult behavior and limit the free choice of individuals old enough to serve on juries, vote in elections, and serve their country in the armed forces. Raising the legal age of tobacco purchase to 21 also would be difficult to enforce, given the large number of stores that sell tobacco products and the limited ability of the state to identify violators.

In seeking to restrict the access of minors to tobacco products, the bill would overreach by raising the smoking age to 21. If the goal is to keep tobacco products out of schools by increasing the social distance between legal purchasers and minors, the bill could accomplish this while protecting the free choice of more individuals by raising the age to purchase tobacco products to 19.

E-cigarettes are not as dangerous as cigarettes and should not be included in this bill. In some cases, doctors may recommend that a patient use an e-cigarette as an alternative to a more potentially harmful tobacco product.

## Notes

The HRO analysis of SB 21 appeared in Part Two of the May 14 *Daily Floor Report*.

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# Prohibiting transactions between governmental entity, abortion provider

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## SB 22 by Campbell

*Effective September 1, 2019*

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**SB 22** prohibits a governmental entity from entering into a taxpayer resource transaction with an abortion provider or affiliate of an abortion provider. This prohibition does not apply to such transactions that are subject to federal law in conflict with the bill's prohibition as determined by the executive commissioner of the Health and Human Services Commission and confirmed in writing by the attorney general.

**Definitions.** SB 22 defines "governmental entity" as the state, a state agency in the executive, judicial, or legislative branch, or a political subdivision. The bill defines "taxpayer resource transaction" as a sale, purchase, lease, donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity that provides something of value derived from state or local tax revenue to the private entity, regardless of whether the governmental entity receives something of value in return. The term excludes the provision of basic public services, including fire and police protection and utilities.

A taxpayer resource transaction includes advocacy or lobbying by or on behalf of a governmental entity on behalf of an abortion provider or affiliate's interests but excludes:

- an officer or employee of a governmental entity providing information to a member of the Legislature or appearing before a legislative committee at the request of the member or committee;
- an elected official advocating for or against or otherwise influencing or attempting to influence the outcome of pending legislation; or
- an individual speaking as a private citizen on a matter of public concern.

The bill defines an "abortion provider" as a licensed abortion facility or an ambulatory surgical center that performs more than 50 abortions in any 12-month period. "Affiliate" means a person or entity who with another person or entity enters into a legal relationship that is created by at least one written instrument, including a

certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, that demonstrates:

- common ownership, management, or control between the parties to the relationship;
- a franchise granted by the person or entity to the affiliate; or
- the granting or extension of a license or other agreement authorizing the affiliate to use the other person's or entity's brand name, trademark, service marks, or other registered identification mark.

**Exemptions.** SB 22 does not apply to:

- a licensed general or special hospital;
- a licensed physician's office that performs 50 or fewer abortions in any 12-month period;
- a state hospital providing inpatient care and treatment for persons with mental illness;
- a public or private higher education teaching hospital; or
- an accredited residency program providing training to resident physicians.

**Other provisions.** The provisions of SB 22 may not be construed to restrict a municipality or county from prohibiting abortion.

The attorney general may bring an action to enjoin a violation of prohibited transactions and recover reasonable attorney's fees and costs. Sovereign or governmental immunity, as applicable, of a governmental entity to suit and from liability is waived.

## Supporters said

By prohibiting state and local governments from entering into contracts with abortion providers and their affiliates, SB 22 would close loopholes to ensure that taxpayers were not inadvertently subsidizing abortion.

The bill would ensure greater transparency and accountability in contracts and transactions entered

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into by cities, counties, and hospital districts. Although the Legislature has taken steps through budget riders to prevent state funds from flowing to abortion providers and their affiliates, SB 22 would create a permanent ban on the use of public funds to subsidize abortion, which are opposed by many Texans for moral or other reasons.

The bill would not reduce access to health care. The state has invested more funds in and increased the number of available providers for women's health care programs, such as the Healthy Texas Women program, which helps decrease the maternal mortality rate by providing preventive screenings for cholesterol, diabetes, and high blood pressure.

## Critics said

SB 22 would reduce access to reproductive health care by preventing political subdivisions, the state, and state agencies from contracting with providers to deliver health care services if the providers also performed abortions or were affiliated with abortion providers. Decisions about contracting with health care providers should be left to local elected officials, who are accountable to their voters, rather than decided at the state level.

By requiring local government entities to exclude health care providers with experience providing essential and affordable services, such as cancer screenings and reproductive health care, the bill would limit the ability of cities, counties, and hospital districts to address the unique needs of their communities and could contribute to increased teen pregnancy and maternal mortality rates. In addition, this legislation could undermine future efforts to address emerging local issues and health care crises, including outbreaks of sexually transmitted infections and viruses, potentially jeopardizing the health of vulnerable populations.

## Notes

The HRO analysis of SB 22 appeared in Part One of the May 17 *Daily Floor Report*.

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# Banning local governments from using public funds to lobby certain bills

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## SB 29 by Hall

*Died in the House*

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SB 29 would have prohibited the governing body of a political subdivision from spending public money to influence or attempt to influence directly or indirectly the outcome of legislation pending before the Legislature related to:

- taxation, including implementation, rates, and administration;
- bond elections;
- tax-supported debt; or
- ethics and transparency of public servants.

The bill would have applied to political subdivisions that imposed a tax and to regional mobility authorities, toll road authorities, or transit authorities.

SB 29 would not have prohibited an officer or employee of a political subdivision from:

- providing information or appearing before a legislative committee at the request of a member;
- advocating for or against, influencing, or attempting to influence pending legislation while acting as an elected officer; or
- advocating for or against, influencing, or attempting to influence pending legislation if those actions did not require a person to register as a lobbyist.

In certain circumstances, the governing body of a political subdivision could have spent money in its name for membership fees and dues of a nonprofit state association or organization of similarly situated political subdivisions if the organization did not influence legislation as prohibited by the bill.

If a political subdivision or organization engaged in an activity prohibited by SB 29, a taxpayer or resident of the subdivision would have been entitled to appropriate injunctive relief to prevent any further activity. A taxpayer or resident who prevailed in an action would have been entitled to recover reasonable attorney's fees and costs incurred in bringing the action.

A political subdivision that used public money to influence or attempt to influence pending legislation would have had to disclose on a comprehensive annual financial report the total amount spent that fiscal year to compensate registered lobbyists. This provision would not have required a political subdivision or authority to prepare a separate comprehensive annual financial report for that disclosure.

## Supporters said

SB 29 would help end the practice of local governments using tax dollars to lobby the Legislature for measures that would take more money from citizens and residents. The bill would prohibit political subdivisions, including cities, counties, school districts, and transportation authorities, from hiring contract lobbyists to influence legislation specifically related to taxation, bond elections, tax-supported debt, and ethics.

Local governments use millions of dollars of taxpayer money each year for lobbying, diverting those funds from important community services. The lobbyists typically represent the best-funded and most well connected individuals, not average citizens. Payments are made with no transparency because local governments do not divulge how much money is paid to these lobbyists.

Not only is it unfair for taxpayer money to be used for lobbying activities against most taxpayers' interests, but large metropolitan areas have the budget to spend much more on contract lobbying than rural districts, giving them an advantage. This bill would level the playing field between urban and rural areas, giving them equal representation at the Legislature.

SB 29 would ensure that taxpayer dollars were not used against taxpayer wishes but also would continue to allow lobbying on topics other than taxation, bond elections, public debt, and government ethics. Local governments would have to report lobbying expenses in a comprehensive annual financial report, ensuring

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transparent use of public funds. The bill also would allow local elected officials and their staff to lobby the Legislature for any issue and local governments to join an organization representing local governments, as is already allowed for counties.

## Notes

The HRO analysis of SB 29 appeared in Part One of the May 20 *Daily Floor Report*.

## Critics said

SB 29 would limit the ability of cities, counties, school districts, and other local governments to advocate on behalf of their communities. It is not an efficient use of taxpayer money to pay for certain local government employees, who have other needs and full-time jobs in their communities, to travel to the Texas Capitol to attend multiple committee hearings, visit legislative offices, and field requests from members.

The premise of the bill — that local government lobbyists advocate against the interests of taxpayers — is incorrect. Local governments hold transparent open meetings to gain community input and are also subject to open records requests. Residents and taxpayers ultimately have the ability to set the legislative agenda, and local government lobbyists often protect the interests of residents against private lobbyists. This bill would remove local control and have a chilling effect on local engagement at the Legislature. If local governments could not lobby the Legislature, future legislation that constituted an unfunded mandate could further cost taxpayer money.

SB 29 also would leave cities, counties, and other local governments open to liability for any number of simple activities. The bill is not specific as to what is meant by “directly or indirectly influencing” legislation, which may lead to confusion and a large number of suits filed against local governments. Those actions would ultimately come at the expense of taxpayers.

## Other critics said

While SB 29 is a necessary step to end the practice of taxpayer-funded lobbying, the bill should go further to better protect taxpayer interests. It should have a better enforcement mechanism, rather than making taxpayers pay to go to court and face lawyers paid for with public tax dollars. The bill would be more effective if violations were reported to the Office of the Attorney General and individuals who violated the bill had to pay with their own money.

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# Revising determination of ESF sufficient balance, reinvestment of fund

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## SB 69 by Nelson

*Effective September 1, 2019*

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**SB 69** revised the way the sufficient balance of the Economic Stabilization Fund (ESF), also known as the rainy day fund, is determined and how the fund can be invested.

Revenue for the ESF comes almost entirely from oil and natural gas production taxes. A constitutional amendment adopted in 2014 requires the comptroller to send some of this tax revenue to the State Highway Fund, while the rest continues to go to the ESF. If necessary, the comptroller uses procedures in the Government Code to either reduce or withhold allocations to the State Highway Fund to maintain what is called the sufficient balance of the ESF. The sufficient balance is set before each regular legislative session by a joint legislative committee and is also used to establish amounts subject to certain kinds of investing.

SB 69 eliminated the select committee of legislators that previously determined the sufficient balance for the fund. Instead, the bill requires the comptroller to determine and adopt the ESF sufficient balance as 7 percent of the certified general revenue related appropriations made for the fiscal biennium in which the determination is made.

SB 69 also revised the investment criteria applied to the ESF, including restrictions that allowed only a portion of the fund to be invested using the prudent investor standard. The bill requires at least one-quarter of the fund's balance to be invested to ensure liquidity of that amount and allows the comptroller to use the prudent investor standard to invest the rest of the fund to ensure liquidity.

The bill also extended from 2024 to 2034 the laws governing the determination of a sufficient balance and transfers to the ESF and the State Highway Fund to maintain a sufficient balance.

### Supporters said

SB 69 would revise how the ESF is administered to maximize its investments, while keeping the fund

safe and available to the Legislature. The bill would not affect transfers to the State Highway Fund, which would continue once the ESF's sufficient balance was met.

Under SB 69, the sufficient balance of the ESF would be set in a more objective manner, rather than being decided by a legislative committee. The bill would set the sufficient balance at 7 percent of the certified revenue estimate, which would ensure that enough was in the fund to deal with unexpected economic downturns or natural disasters, while simplifying and depoliticizing the calculation. The bill would set the sufficient balance in this manner based on information from credit rating agencies about the level of state reserves that result in the highest credit rankings.

The investment structure set up by the bill would make sure that the bulk of the ESF was invested in a safe class of assets that would yield a better return on the state's investments than occurs under current law. Currently, the comptroller may invest only a portion of the fund above the sufficient balance using the prudent investor standard, which leaves much of the fund bringing in lower yields. SB 69 would extend the successful strategy of using the prudent investor standard and would allow investments to keep pace with inflation and maintain purchasing power. The ESF, including amounts below the sufficient balance, would continue to be available to the Legislature under the current requirements for spending the fund and could be accessed quickly if needed for a disaster or other reasons. The bill would not make it any more difficult to spend those funds.

### Critics said

SB 69 could limit appropriate uses of the ESF by changing how the fund's sufficient balance was set. By removing legislative input and instead setting the balance as a percentage of the budget, the bill could make it difficult for the Legislature to use ESF funds that go below that threshold. The sufficient balance can be seen as a floor on spending from the ESF, and the bill would set what might be seen as an inflexible floor. The Legislature would

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not be able to adjust the sufficient balance, even if it felt such an adjustment was necessary.

## Other critics said

The state should keep the funds it needs in emergency reserves and return what it does not need to taxpayers to be used in the private sector. The state would see more returns in the long run with this strategy than it would from creating a new investment standard for the ESF. The ESF was established to address unforeseen shortfalls in revenue, not as a way to raise revenue.

## Notes

The HRO analysis of SB 69 appeared in Part One of the May 20 *Daily Floor Report*.

The House considered other bills and joint resolutions related to the ESF, including ones that would have transferred some of the tax revenue designated for the ESF to new funds.

**HB 20** and **HJR 10** by Capriglione, both of which died in the Senate, would have created the Texas Legacy Fund and the Texas Legacy Distribution Fund. Each fiscal year, a portion of the Texas Legacy Fund's interest and earnings would have been transferred to the Texas Legacy Distribution Fund and could have been appropriated to pay unfunded liabilities of the Employees Retirement System or Teacher Retirement System. The HRO analysis of HB 20 and HJR 10 appeared in Part One of the April 23 *Daily Floor Report*.

**HB 2154** by Landgraf, which died in the House, and **HJR 82** by Craddick, which died in the Senate, would have established the Generating Recurring Oil Wealth for Texas (GROW Texas) fund to receive certain transfers of general revenue that would have gone to the ESF. The fund could have been used only for infrastructure needs in areas affected by oil and gas production. The HRO analysis of HB 2154 appeared in Part Four of the May 8 *Daily Floor Report* and the HRO analysis of HJR 82 appeared in the May 2 *Daily Floor Report*.

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# Expanding public disclosure requirements for certain government contracts

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**SB 943 by Watson**

*Effective January 1, 2020*

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**SB 943** expands public disclosure requirements related to government contracts under the Public Information Act and imposes recordkeeping requirements on certain entities in possession of such information. The bill revises requirements for exceptions from disclosure based on competitive advantage and trade secrets, creates a new exception from disclosure for proprietary information, and expands the definition of a governmental body.

**Contracting information.** The bill requires public disclosure of the following types of contracting information maintained by a governmental body or sent between a governmental body and contractor, unless otherwise excepted under the Public Information Act:

- information in vouchers or contracts on the receipt or expenditure of public funds by governmental bodies;
- solicitation or bid documents relating to a contract with a governmental body;
- communications between a governmental body and a vendor or contractor during the solicitation, evaluation, or negotiation of a contract;
- documents showing the criteria by which a governmental body evaluated responses to a solicitation; and
- communications and other information about the performance of a final contract with a governmental body or work performed on behalf of the governmental body.

Excluding information properly redacted under law, the following types of contracting information may not be excepted from disclosure as trade secrets, proprietary information, or commercial or financial information that would cause competitive harm:

- contracts with a state agency required to be posted on the agency's website;
- contracts required to be included in the Legislative Budget Board's major contract database;
- contract or offer terms describing price, items or services subject to the contract, delivery and service deadlines, remedies for breach of

contract, identity of parties or subcontractors, affiliate overall or total pricing for the contractor, execution and effective dates, and duration dates; and

- information indicating whether a contractor performed its duties under a contract.

**Contracting information held by certain entities.**

The bill requires a nongovernmental entity that executes a contract with a governmental body that has a stated expenditure of at least \$1 million in public funds or that results in the expenditure of at least \$1 million in public funds in a fiscal year to be subject to certain recordkeeping and disclosure requirements.

Under the bill, certain contracts between a governmental body and another entity must require the contracting entity to preserve all contracting information as provided by the governmental body's record retention requirements for the duration of the contract. The entity must provide the governmental body any related information on request, and upon the contract's completion, the entity either must provide at no cost to the governmental body all contracting information in the entity's possession or preserve such information under the governmental body's recordkeeping requirements.

A governmental body may not accept a bid for a contract or award a contract to an entity that the governmental body determines to have knowingly or intentionally failed to comply with the bill's requirements in a previous bid or contract unless the governmental body determines that the entity has taken adequate steps to ensure future compliance.

**Competitive advantage exception.** SB 943 excepts information from disclosure if a governmental entity demonstrates that the information's release would harm its interests by providing an advantage to a competitor or bidder in a particular ongoing competitive situation or in a particular competitive situation that is set to reoccur or if there is a specific and demonstrable intent to enter into the competitive situation again in the future.



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**Trade secrets exception.** The bill excepts from disclosure certain information that is shown by specific factual evidence to be a trade secret. A trade secret is defined as all forms and types of information if the owner of the information has taken reasonable measures to keep it secret and if the information derives independent economic value from not being generally known to or readily accessible by another person who could obtain economic value from its use or disclosure.

**Proprietary information exception.** SB 943 also excepts from disclosure certain information submitted to a governmental body by a vendor, contractor, or potential vendor or contractor in response to a request for a bid, proposal, or qualification if the vendor or contractor demonstrates that public disclosure would give an advantage to a competitor by revealing an individual approach to work, organizational structure, staffing, internal operations, processes, or pricing information. This exception may be asserted only by a contractor, vendor, or potential vendor or contractor to protect its interests.

**Definition of governmental body.** SB 943 expands the definition of a governmental body to include:

- a confinement facility operated under contract with the Texas Department of Criminal Justice;
- a civil commitment housing facility owned, leased, or operated by a vendor under contract with the state for the civil commitment of sexually violent predators; and
- an entity that receives public funds in the current or preceding fiscal year to manage daily operations or restoration of the Alamo or an entity that oversees such an entity.

**Economic development entities.** The bill specifies that certain economic development entities that contract with a state agency or political subdivision to promote economic growth are not considered governmental bodies. These entities may assert that information in their custody relating to economic development agreements with governmental bodies is excepted from disclosure.

## Supporters said

SB 943 would improve the transparency and accountability of state and local governments by removing court-created loopholes from the Public Information Act and would strike a balance between promoting competition and providing taxpayers with information about how their money is being spent.

Recent Texas Supreme Court decisions have given contractors significant latitude to claim that information related to their government contracts should be kept secret, essentially overruling decades of attorney general interpretations promoting transparency. In some cases, even the contracts themselves and the amount of taxpayer money at issue were held to be exempt from public disclosure. As a result, the public's ability to keep informed about government spending and contracting has been greatly reduced.

SB 943 would help restore transparency to government and protect taxpayer dollars from waste, fraud, and abuse while recognizing that some information is proprietary and needs to be protected from disclosure. The bill would return certain exceptions under the Public Information Act back to their longstanding interpretation while providing a new exception to disclosure for truly proprietary information.

The bill would improve accountability by requiring certain contractors to maintain information associated with their government contracts and to provide that information in response to public information requests. Maintaining these records simply would be part of the cost of doing business with state or local governments.

## Critics said

SB 943 would impose recordkeeping requirements on entities that contracted with governmental bodies that could prove burdensome for smaller contractors.

## Notes

The HRO analysis of SB 943 appeared in Part Two of the May 17 *Daily Floor Report*.

The 86th Legislature enacted a related bill, **HB 81** by Canales, which took effect May 17, 2019. HB 81 designates as subject to the Public Information Act information related to a governmental body's receipt or expenditure of funds in connection with a publicly funded entertainment event. Contracts related to such events may not include any provision preventing the disclosure of this information, and any such provision is void. The HRO analysis of HB 81 appeared in the March 20 *Daily Floor Report*.

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# Prohibiting certain communications outside of open meetings

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**SB 1640 by Watson**

*Effective June 10, 2019*

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**SB 1640** revises the conduct that constitutes an offense under Government Code sec. 551.143, commonly known as the “walking quorum” prohibition. Under this section of the Texas Open Meetings Act, members or a group of members of a governmental body commit an offense if the members or group knowingly conspire to circumvent the Open Meetings Act by meeting in numbers less than a quorum for secret deliberations.

Under SB 1640, a member of a governmental body commits an offense if the member knowingly engages in at least one communication among a series of communications that each occurs outside of a meeting authorized by the Open Meetings Act and that concern an issue within the jurisdiction of the governmental body in which the members engaging in the individual communications constitute fewer than a quorum but the members engaging in the series of communications constitute a quorum. At the time the member engages in the communication, the member also must know that the series of communications involves or will involve a quorum and will constitute a deliberation once a quorum engages in the series of communications.

The bill revises the definition of “deliberation” to mean a verbal or written exchange between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body.

## Supporters said

SB 1640 would restore the “walking quorum” prohibition to the Texas Open Meetings Act by addressing constitutional concerns identified by the Texas Court of Criminal Appeals. In February 2019, the court concluded in *State v. Doyal* that Government Code sec. 551.143, commonly referred to as the “walking quorum” prohibition, was unconstitutionally vague on its face. The court took issue with language in sec. 551.143, under which a member or group commits an offense if the member or group “knowingly conspires to circumvent this chapter,” concluding that current law requires a person to

envison actions that are like a violation of the act without actually being a violation and refrain from engaging in them. Additionally, the absence of a clear definition of the concept of a walking quorum reinforced the court’s conclusion that the current language is broad and lacks reasonable clarity about what it covers.

Restoring this prohibition is essential to ensuring the public’s business is conducted in the open. The original intent of the prohibition was to prevent members of a governmental body from skirting requirements of the Open Meetings Act by meeting in a series of small, private gatherings to avoid a quorum. Without a walking quorum prohibition, nothing would stop governmental bodies from meeting in smaller groups to obscure government business from the public, thereby avoiding the spirit and intent of the act.

The bill would address the court’s concerns by making the conduct that constituted an offense more specific, precise, and clear. By helping governmental bodies better understand the law, it would help ensure transparency and accountability to the public they serve. Officials would have to knowingly engage in a series of exchanges outside of a public meeting that involved or would eventually involve a quorum. The bill would specify that the prohibition applied only to issues within a governmental body’s jurisdiction and that deliberations could take place in verbal or written exchanges.

## Critics said

No concerns identified.

## Notes

The HRO analysis of SB 1640 appeared in Part One of the May 17 *Daily Floor Report*.

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# Regulating the removal, relocation, and alteration of historical monuments

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## SB 1663 by Creighton

*Died in House Calendars Committee*

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**SB 1663** would have prohibited the removal, relocation, or alteration of monuments that have been located on state, municipal, or county property for at least 40 years. Monuments that had been located on such property for less than 40 years could have been removed, relocated, or altered under certain conditions. The bill would have defined a monument or memorial to include a statue, portrait, plaque, seal, symbol, building name, bridge name, park name, area name, or street name that was located on state property and that honored an event or person of historic significance.

The bill would have allowed for additional monuments or memorials to be added to surrounding state property to complement or contrast with existing monuments.

The bill would have allowed residents to file a complaint with the attorney general alleging that an entity had violated the bill's provisions and allowed the attorney general to petition for a writ of mandamus against entities for valid complaints.

## Supporters said

SB 1663 would preserve Texas history by prohibiting the state or local governments from removing or altering historical monuments. Rather than attempting to erase or revise history, Texans should be encouraged to learn from it. The bill would allow for different historical perspectives by permitting the creation of new monuments and memorials near existing ones to display other viewpoints and experiences.

## Critics said

SB 1663 would protect monuments and memorials that are inaccurate or that could be construed as a celebration of painful historical moments. Such memorials belong in a museum where they can be placed in the appropriate historical context.

## Notes

SB 1663 died in the House Calendars Committee and was not analyzed in a *Daily Floor Report*.

The 86th Legislature considered other bills related to historical monuments. **HB 3948** by Toth, which was identical to SB 1663, was referred to the House Committee on Culture, Recreation, and Tourism but did not receive a hearing. **HB 583** by White, which was similar to SB 1663, died in the House Calendars Committee.

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# Preventing adverse government actions based on religious affiliations

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## SB 1978 by Hughes

*Effective September 1, 2019*

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**SB 1978** prohibits a governmental entity from taking any adverse action against any person based wholly or partly on the person's membership in, affiliation with, or contribution, donation, or other support to a religious organization.

A "governmental entity" is defined as including the Legislature or a legislative agency, a state judicial agency or the State Bar of Texas, a state or local governmental entity, or an officer, employee, or agent of such bodies.

Under the bill, an adverse action includes any action taken by a governmental entity to:

- withhold, reduce, exclude, terminate or otherwise deny any contract, grant or loan, license, registration, accreditation, or employment from or to a person;
- withhold, reduce, exclude, terminate or otherwise deny any benefit provided under a benefit program from or to a person;
- alter the tax treatment or revoke a tax exemption of a person;
- disallow a tax deduction for any charitable contribution made to or by a person;
- deny admission to, equal treatment in, or eligibility for an educational degree to a person; or
- withhold, reduce, exclude, terminate, or otherwise deny access to a property, educational institution, speech forum, or charitable fundraising campaign from or to a person.

The bill uses a Government Code definition of "person" that includes corporations, organizations, and associations. The term does not include governmental employees or governmental contractors acting within their scope of employment or contract. It also does not include an individual or a medical or residential custodial health care facility while the individual or facility is providing medically necessary services to prevent another individual's death or imminent serious physical injury.

The bill uses a Civil Practice and Remedies Code definition of "religious organization," which defines it as an organization whose primary purpose and function is religious and that does not engage in activities that would disqualify it from federal tax exempt status.

A person may assert an actual or threatened violation of the bill's prohibition on adverse action as a claim or defense in a judicial or administrative proceeding and obtain injunctive relief, declaratory relief, and court costs and reasonable attorney's fees. Sovereign or governmental immunity is waived and abolished to the extent of liability for that relief.

## Supporters said

SB 1978 would ensure that governmental entities could not discriminate against individuals and businesses exercising their rights to religious freedom as expressed through their membership in or contribution to religious organizations. This would protect the First Amendment rights of all Texans, regardless of their political views or lifestyle, to support religious organizations without fear that it could impact their ability to work or do business with a governmental entity.

The bill is a reasonable response to concerns that governmental entities could undermine the rights of individuals and businesses by making contracting decisions based on those individuals' and businesses' support of certain religious nonprofits. Government should not use its power over Texans' ability to earn a living to deny a contract, loan, license, accreditation, or employment to a person based on the person's affiliation with a religious organization.

## Critics said

SB 1978 could compel local elected officials to do business with a person or business that supported religious organizations that the city believed were discriminatory

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against people who may not conform to certain religious beliefs. City councils should be allowed to make contracting decisions that reflect the values of their citizens without interference from state government.

The bill is unnecessary because the First Amendment and Texas Civil Practice and Remedies Code ch. 110 on religious freedom already prevent a government agency from substantially burdening a person's free exercise of religion.

## **Notes**

The HRO analysis of SB 1978 appeared in Part One of the May 20 *Daily Floor Report*.

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# Preempting certain local regulations on private businesses

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## SB 2485, SB 2486, SB 2487, and SB 2488 by Creighton

*Died in the House*

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Several bills filed in the 86th Legislature would have preempted certain local regulations on private businesses.

**SB 2485** would have prohibited a political subdivision from adopting or enforcing an ordinance, rule, or regulation mandating a private employer's terms of employment relating to employment benefits.

**SB 2486** would have prohibited a political subdivision from regulating a private employer's terms of employment relating to scheduling practices or overtime compensation.

**SB 2487** would have prohibited a political subdivision from regulating a private employer's terms of employment relating to any form of employment leave, including paid days off for holidays, sick leave, vacation, and personal necessity.

SB 2485, SB 2486, and SB 2487 would not have affected the Texas Minimum Wage Act or a regulation that prohibited employment discrimination.

**SB 2488** would have prohibited a political subdivision from prohibiting, limiting, or otherwise regulating a private employer's ability to request, consider, or take employment action based on the criminal history record information of an applicant or employee.

### Supporters said

SB 2485, SB 2486, SB 2487, and SB 2488 would preempt certain burdensome local regulations on private businesses. Local governments should not dictate how private businesses offer employment benefits, make scheduling policies, or provide employment leave. Businesses also should have the freedom to know the potential criminal history of any applicants. These regulations, which vary city to city, create compliance issues and bureaucratic hurdles for small businesses and businesses that operate across city or state lines.

SB 2485, SB 2486, and SB 2487 would provide statewide consistency and fairness by removing patchwork

regulations on how private businesses may operate regarding their employees' benefits, scheduling requests, and leave policies. Different industries have different needs for scheduling flexibility and leave policies, and restricting a business's ability to set its own employment policies can be costly and burdensome. Some local ordinances could affect a business's ability to retain staff or could lead a business to reduce employee hours, harming employees. Other ordinances unfairly regulate employers based outside of the city or state, even if they send employees into the city for only a short amount of time. Private businesses want to remain competitive and attract the best employees so they will provide the best benefits packages they can. Communities in Texas should be less restrictive of businesses to maintain a thriving economy.

SB 2488 would prevent local governments from prohibiting employers from considering the criminal history of an applicant. Employers have the right to know the background of their potential employees to protect their business and best place applicants in a job. It also is not fair for an applicant to be given false hope that they could qualify for a position and waste time moving through the application process only to find out later that their criminal history disqualified them from that particular job.

### Critics said

SB 2485, SB 2486, SB 2487, and SB 2488 would roll back important workplace protections that local communities decided to provide. Some would make it more difficult for employees to receive basic working rights, such as water breaks and paid sick leave, and another would prohibit ordinances that help eliminate biases from the hiring process by removing the question of an applicant's criminal history from the initial employment application.

The local regulations that would be removed by SB 2485, SB 2486, and SB 2487 provide important protections for local workers and were crafted based on input from local businesses. While some ordinances

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have a cost for businesses, cities that have enacted such policies remain economically strong. Workers are also more productive if they are financially secure and healthy, increasing profits for their employers. Employees deserve basic rights to ensure that hard-earned benefits are not taken away and that individuals do not have to work while they or a family member are sick or injured. If the Legislature intends to block these local ordinances, it also should pass a statewide policy on employee benefits, scheduling, and paid sick leave to protect Texas workers.

SB 2488 would preclude some applicants with a criminal background who had already paid their debt to society from even being considered for a job, potentially increasing recidivism and more negatively affecting certain communities. The bill also is unnecessary because federal laws already give businesses certain rights to perform background checks. Local regulations simply move the question of criminal history to the end of the application process, after an applicant has been given the opportunity to be considered. If employers are concerned about wasting time interviewing an individual whose criminal history may bar them from the job, they could make a note on the application that certain offenses may disqualify an applicant.

## Notes

SB 2485, SB 2486, SB 2487, and SB 2488 died in the House Calendars Committee and were not analyzed in a *Daily Floor Report*.

A similar bill, **SB 15** by Creighton, would have prohibited a political subdivision from adopting or enforcing an ordinance, order, rule, regulation, or policy regulating a private employer's terms of employment relating to any form of employment leave, employment benefits, or scheduling practices. It also would have prohibited a political subdivision from adopting or enforcing a policy that prohibited, limited, or otherwise regulated a private employer's ability to request, consider, or take employment action based on the criminal history record information of an applicant or employee. SB 15 died in the Senate and did not appear in a *Daily Floor Report*.





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# Health and Human Services

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\*Finally approved

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# Medicaid funding

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## HB 1 by Zerwas

*Effective September 1, 2019*

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**HB 1**, the general appropriations act, appropriated \$66.5 billion in all funds for the Texas Medicaid program in fiscal 2020-21. This appropriation includes:

- \$61.5 billion for Medicaid client services, including funds for caseload growth, community-based long-term care, attendant wage and rate-enhancement program increases, and rate increases for consumer-directed services and certain waivers;
- \$1.8 billion for programs supported by Medicaid funding, like the Early Childhood Intervention program and state supported living centers; and
- \$3.1 billion for administration of and contracts for the Medicaid program.

### Supporters said

HB 1 would increase funding for Medicaid client services from fiscal 2018-19 appropriations while controlling costs in the Medicaid program and providing health care services for those who need them. A higher FMAP allows the state to decrease the amount of general revenue being spent on Medicaid, freeing up that money to be spent on other priorities. The bill also would fund several early childhood intervention priorities, including provider payments and caseload and cost growth, as well as women's health programs in the 2020-21 biennium.

### Critics said

Because HB 1 would not fully restore cuts to therapy provider reimbursement rates made in prior legislative sessions, some children with disabilities may not have access to needed services. The bill also would not fund anticipated Medicaid cost increases of medical inflation, higher utilization, or more intensive care. The Legislature should fully fund Medicaid now rather than waiting to enact a supplemental budget bill in fiscal 2021.

### Notes

The HRO analysis of the Medicaid funding in HB 1 appeared in the HRO State Finance report 86-2, *CSHB 1: The House Appropriations Committee's Proposed Budget for Fiscal 2020-21*, March 2019.

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# Changing disclosure requirements for freestanding ER facilities

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**HB 2041 by Oliverson**

*Effective September 1, 2019*

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**HB 2041** requires freestanding emergency medical care facilities to post notice stating that a facility or a physician providing care at a facility may be an out-of-network provider for a patient's health benefit plan provider network. In the notice, freestanding ERs must list the health benefit plans in which the facility is an in-network provider or state that the facility is an out-of-network provider for all health benefit plans. The bill prohibits a freestanding ER from adding to or altering the language in the required notice.

A facility that is an in-network provider in one or more health plan provider networks may satisfy the notice requirement by giving notice on the facility's website listing the health plans in which the facility is an in-network provider and providing to a patient written confirmation of whether the facility is an in-network provider in the patient's health benefit plan provider network.

HB 2041 also requires freestanding ER facilities to provide to a patient or a patient's legally authorized representative a written disclosure statement that lists the facility's observation and facility fees that may result from the patient's visit and that includes other information related to the facility's observation and facility fees as specified in the bill. Such disclosure statements also must either list the health benefit plans in which the facility is an in-network provider or state that the facility is an out-of-network provider for all health benefit plans.

A facility may satisfy certain disclosure statement requirements by posting its standard charges on its website in a manner that is easily accessible and readable. Facilities must post updated standard charges at least annually.

HB 2041 prohibits a freestanding ER facility from advertising or holding itself out as a network provider, including by stating that the facility "takes" or "accepts" any insurer, health maintenance organization, health benefit plan, or health benefit plan network unless the facility is a network provider of a health benefit plan issuer. Facilities are prohibited from posting the name or logo of

a health benefit plan issuer in any signage or marketing materials if the facility is an out-of-network provider for all of the issuer's plans. Facilities that close or whose licenses expire, are suspended, or are revoked must immediately remove any signs within view of the general public that indicate the facility is in operation.

The bill also removes the \$5,000 penalty cap for violations under Health and Safety Code ch. 254 continuing or occurring on separate days. Under the bill, each day of a continuing violation may be considered a separate violation for imposing a penalty. Administrative penalties collected by the Department of State Health Services must be deposited in the state treasury to the credit of the freestanding emergency medical care facility licensing fund.

## Supporters said

HB 2041 would help prevent surprise medical bills by requiring freestanding ERs to disclose their facility fees and to clarify their health plan network status to patients in advance. Some freestanding ERs engage in misleading marketing practices by telling patients they accept a patient's insurance even though the facility is out-of-network. The bill is narrow in scope because most out-of-network emergency facility claims in Texas originate from freestanding ERs. Many consumers are unaware of the cost differences between different emergency facilities and have little recourse when they receive bills they cannot afford to pay, which could affect their credit rating or lead to bankruptcy. The bill is necessary to increase price transparency and educate patients about a facility's network status and fees.

The bill also would strengthen enforcement mechanisms by removing the \$5,000 penalty cap the Department of State Health Services could administer for violations continuing or occurring on separate days.

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## Critics said

HB 2041 could delay a patient's treatment by requiring freestanding ERs to disclose their facility fees in advance. This could force a patient to make health care decisions based on their finances rather than on the perceived medical emergency before them, potentially endangering their lives. Patients should not be afraid to receive health care because of costs.

## Other critics said

HB 2041 should apply the disclosure requirements to all emergency facilities, especially hospitals, which often contract with doctors and other health providers who are out-of-network.

## Notes

The HRO analysis of HB 2041 appeared in Part Three of the April 29 *Daily Floor Report*.

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# Requiring human trafficking prevention training for health care practitioners

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**HB 2059 by Blanco**

*Effective September 1, 2019*

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**HB 2059** requires certain health care practitioners to complete a course on human trafficking prevention to renew a license or registration permit. These practitioners include those who hold a license, certificate, permit, or other authorization to engage in a health care profession and who provide direct patient care.

**Health care practitioners.** The bill requires health care practitioners, other than physicians and nurses, to complete a training course on identifying and assisting victims of human trafficking. Completing the course is a condition for the renewal of these health care practitioners' licenses, and the course must be approved by the executive commissioner of the Health and Human Services Commission (HHSC).

Health care practitioners are not required to complete the required training course before September 1, 2020.

**Physicians.** The bill also requires physicians who submit an application for renewal of a registration permit and who designate a direct patient care practice to complete the human trafficking prevention course approved by the HHSC's executive commissioner. Completion of this course falls under the hours of continuing medical education required of license-holders.

The Texas Medical Board will have to adopt rules to implement this requirement and must designate the required course as a medical ethics or professional responsibility course for the purposes of complying with continuing medical education requirements.

**Nurses.** As part of a continuing competency program, a nursing license holder who provides direct patient care is required to complete the human trafficking prevention course. The Texas Board of Nursing must adopt rules to implement this requirement.

The executive commissioner of HHSC must approve training courses on human trafficking prevention, including at least one free course, and post a list of the approved courses on the HHSC website. The executive

commissioner will update this list as necessary and consider for approval training courses conducted by health care facilities.

As soon as practicable after September 1, 2019, courses must be approved and posted and the rules necessary to implement the training requirements for health care practitioners must be adopted.

Provisions of the bill relating to continuing education programs for physicians and other license-holders will apply only to the renewal of a registration permit to practice medicine or nursing on or after September 1, 2020.

Applicable licensing agencies must provide notice to health care practitioners of the required human trafficking prevention training as soon as practicable after September 1, 2019.

## Supporters said

HB 2059 would help Texas combat human trafficking by ensuring that health care providers were trained to identify and assist victims. Studies have found that there are an estimated 313,000 human trafficking victims in Texas alone and that an estimated 88 percent of trafficking victims surveyed report having come into contact with a health care provider while they were being trafficked.

If physicians, nurses, and other licensed health care practitioners were trained to spot the warning signs as part of their professional education requirements, they could effectively assist victims in receiving care and escaping their traffickers. Without this training, practitioners may fail to recognize a human trafficking victim. By tying license and registration permit renewal to the completion of a human trafficking training course, the bill would ensure that health care practitioners could recognize human trafficking and assist victims.

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## Critics said

No concerns identified.

## Notes

HB 2059 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

The 86th Legislature considered other bills related to human trafficking prevention training for certain professionals.

**HB 111** by M. González, effective May 31, 2019, requires school districts and open-enrollment charter schools to adopt policies addressing sexual abuse, sex trafficking, and other maltreatment of children in their district improvement plans. These policies must address methods for increasing staff, student, and parent awareness, actions that children who are victims of sexual abuse, trafficking, or maltreatment should take to obtain assistance, and available counseling options. The methods for increasing awareness would have to include training on the prevention of sexual abuse, sex trafficking, and other maltreatment of children with significant cognitive disabilities. The HRO analysis of HB 111 appeared in the March 19 *Daily Floor Report*.

**HB 292** by S. Thompson, effective September 1, 2019, requires peace officers and reserve law enforcement officers to complete the basic education and training program on human trafficking as part of the Texas Commission on Law Enforcement's minimum curriculum requirements. Officers will have to complete the program by the second anniversary of their initial licensing, unless an officer completed the program as part of the basic training course. The HRO analysis of HB 292 appeared in Part One of the May 6 *Daily Floor Report*.

**HB 403** by S. Thompson, effective September 1, 2019, requires members of boards of trustees and superintendents of independent school districts to complete an hour of training on identifying and reporting potential victims of sexual abuse, human trafficking, and other maltreatment of children every two years. The bill expands the continuing education requirements for superintendents to include at least 150 minutes of human trafficking and child maltreatment training every five years. The HRO analysis of HB 403 appeared in the March 19 *Daily Floor Report*.

**SB 1593** by Rodríguez, effective September 1, 2019, requires the Texas Department of Transportation (TxDOT) to develop and make available to its employees a training course on recognizing and preventing human trafficking and smuggling. TxDOT will have to collaborate with the attorney general in developing the content of this training. SB 1593 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

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# Establishing opioid prescription limits and requiring e-prescribing

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HB 2174 by Zerwas

Effective September 1, 2019

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**HB 2174** establishes limits on prescribing opioids for acute pain. It also requires prescriptions for controlled substances to be submitted electronically rather than in writing, with some exceptions, and requires Medicaid reimbursement for medication-assisted opioid or substance use disorder treatment.

**Opioid prescription limits.** The bill prohibits a practitioner from prescribing more than a 10-day supply of an opioid or issuing an opioid prescription refill for the treatment of acute pain. Opioids used to treat substance addiction are exempted from this limit. HB 2174 defines “acute pain” as the time-limited, normal response to trauma, disease, or operative procedures. The term does not include chronic pain or pain being treated as part of cancer care, hospice or end-of-life care, or palliative care.

The limits on prescription drugs under the state Medicaid program do not apply to an opioid prescription used to treat acute pain.

**Electronic prescribing requirements.** A person may not dispense or administer a controlled substance without an electronic prescription that meets certain requirements, except in specified cases. In an emergency, as defined by Texas State Board of Pharmacy (TSBP) rule, a person could dispense or administer a controlled substance if a prescription were communicated by a practitioner orally or by telephone.

*Exemptions.* Under the bill, a prescription may be issued in writing under certain circumstances, including if it is issued in circumstances where electronic prescribing is not available due to temporary technological or electronic failure, to be dispensed by an out-of-state pharmacy, or when the prescriber and dispenser are in the same location or under the same license.

A practitioner who reasonably determines that a patient would be unable to obtain drugs under an electronic prescription in a timely manner and that a delay would adversely impact the patient’s medical condition

also may issue a prescription for a controlled substance in writing.

HB 2174 requires a written prescription for a Schedule II controlled substance, which includes certain narcotic, stimulant and depressant drugs, to be on an official prescription form and to include certain information required for an electronic prescription as well as the practitioner and dispensing pharmacist’s signatures. No more than one Schedule II prescription may be recorded on an official prescription form.

*Waivers.* Each regulatory agency that issued a prescriber’s license, certification, or registration may grant the prescriber a one-year waiver from the electronic prescribing requirement. A prescriber may reapply for a subsequent waiver within 30 days before the date the waiver expires if the circumstances that necessitated the waiver continue.

The bill requires an interagency work group convened by TSBP to establish recommendations and standards for circumstances in which a waiver from the electronic prescribing requirement is appropriate and a process under which a prescriber may request and receive such a waiver. TSBP also must adopt rules establishing eligibility for a waiver.

**Reimbursement for opioid treatment.** Until August 31, 2023, the Health and Human Services Commission must provide Medicaid reimbursement for medication-assisted opioid or substance use disorder treatment without requiring the recipient or provider to obtain prior authorization or precertification for the treatment, except to minimize fraud, waste, or abuse. Such reimbursement is only required if the treatment is prescribed by a licensed health care provider who is authorized to prescribe certain medications, and the obligation to provide reimbursement does not apply with respect to a prescription for methadone or for certain recipients.

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**Penalties.** HB 2174 makes it an offense to knowingly possess, obtain, or attempt to possess or obtain a controlled substance through the use of a fraudulent electronic prescription. An offense is a second degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if the controlled substance is a Schedule I or II drug.

## Supporters said

HB 2174 would help address the opioid crisis in Texas by reducing prescription abuse, over-prescribing, and fraud. Substance abuse is the leading cause of accidental maternal death in Texas and places a large strain on communities and state health resources. Establishing a 10-day limit on opioid prescriptions would limit patients' access to these drugs, decreasing their risk of becoming addicted, and reduce the amount of leftover medication from prescriptions that could be taken by an individual other than the patient. The bill also would require the use of secure electronic prescription forms, which would help to reduce prescription fraud, improve the collection of prescribing data, and reduce pharmacy errors. HB 2174 does not seek to interfere in the doctor-patient relationship, but rather tackle a public health crisis that policymakers have a duty to address.

The bill also would increase access to medication-assisted treatment (MAT) for patients suffering from substance use disorders by requiring the Health and Human Services Commission to provide Medicaid reimbursement. Expanding access to MAT would help deliver medication, therapy, and behavioral management to patients at the highest risk of opioid and substance abuse.

The bill would not negatively affect patients who need more than a 10-day supply of opioids because those patients could make a follow-up appointment and receive a new prescription.

## Critics said

HB 2174 would unnecessarily interfere in the doctor-patient relationship and impose inflexible opioid prescribing standards at odds with national guidelines. In many cases, opioids provide needed relief from acute pain for patients who may require more than a 10-day supply of their prescribed medication, particularly patients in the process of receiving a chronic pain diagnosis. Instead of limiting practitioners' ability to serve their

patients and potentially depriving patients of effective pain management by imposing a rigid prescription limit, the Legislature should address prescription abuse through screening and documentation requirements, education, and periodic patient re-evaluation.

## Notes

The HRO analysis of HB 2174 appeared in Part Two of the April 24 *Daily Floor Report*.

The 86th Legislature also enacted **HB 3285** by Sheffield, effective September 1, 2019. The bill creates an opioid antagonist grant program for law enforcement agencies to provide financial assistance to agencies that seek to provide opioid antagonists to personnel. The bill also requires the Statewide Behavioral Health Coordinating Council to consider substance abuse issues in its strategic plan. Under HB 3285, the Department of State Health Services must operate a statewide public awareness campaign on opioid misuse and collect data on opioid overdose deaths and the co-occurrence of substance abuse disorders and mental illness. The Texas State Board of Pharmacy is required to encourage pharmacists to participate in a program providing a comprehensive approach to early intervention and treatment services for individuals suffering from substance use disorders. The HRO analysis of HB 3285 appeared in Part One of the May 8 *Daily Floor Report*.



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# Expanding eligibility for medical use of low-THC cannabis

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## HB 3703 by Klick

*Effective June 14, 2019*

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**HB 3703** expands on the Texas Compassionate Use Act enacted in 2015 by the 84th Legislature by adding patients with certain medical conditions to the list of those for whom certain physicians may prescribe low-THC cannabis. These additional patients include those with all forms of epilepsy, a seizure disorder, multiple sclerosis, spasticity, amyotrophic lateral sclerosis (ALS), autism, terminal cancer, or an incurable neurodegenerative disease.

The bill specifies that only physicians qualified with respect to a patient's particular medical condition as provided by the bill may prescribe low-THC cannabis to treat the applicable condition. A physician must be board certified in a medical specialty relevant to the treatment of a patient's particular condition by a specialty board approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists.

HB 3703 removes the requirement for a second physician qualified to prescribe low-THC cannabis to concur with the prescribing physician's determination that the risk of the medical use of low-THC cannabis by a patient is reasonable in light of potential benefits to the patient. Under the bill, the Department of Public Safety may not publish the name of a physician in the compassionate-use registry unless the physician expressly grants permission. The bill also modifies the definition of "low-THC cannabis" to remove the specification that it contain not less than 10 percent by weight of cannabidiol.

By December 1, 2019, the executive commissioner of the Health and Human Services Commission, in consultation with the National Institutes of Health, must adopt rules designating diseases as incurable neurodegenerative diseases for which patients may be prescribed low-THC cannabis.

### Supporters said

HB 3703 would help Texans with severe medical conditions by expanding access to low-THC cannabis for those with multiple sclerosis, spasticity, and all forms of

epilepsy. This would give Texans with these conditions another option if other treatments failed.

The bill would apply only to low-THC cannabis, a form of cannabis that does not produce a euphoric effect, has a low propensity for abuse, and has no value on the black market. Recent data have shown low-THC cannabis to be effective at easing the suffering of some individuals with a debilitating illness. Many states have legalized this treatment, but in Texas low-THC cannabis may be prescribed only for intractable epilepsy. Texans seeking this treatment for other serious medical conditions sometimes move to other states in order to obtain it.

The bill would increase the market for low-THC cannabis, which currently is limited, by increasing the number of conditions for which this treatment could be prescribed. This would allow dispensing organizations to manufacture low-THC cannabis in larger quantities and help decrease costs for patients.

### Critics said

HB 3703 could increase the risk of harming patients by allowing them to be prescribed a treatment that has not yet been approved by the Food and Drug Administration as safe or effective. The side effects of low-THC cannabis for medical conditions are relatively unknown, and patients wishing to use low-THC cannabis should wait for this treatment to be fully tested.

The bill also could create opportunities for individuals who were not prescribed the treatment to use low-THC cannabis, which also could be sold on the black market.

### Notes

The HRO analysis of HB 3703 appeared in Part One of the May 6 *Daily Floor Report*.

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The 86th Legislature considered but did not enact several other bills related to the medical use of cannabis.

**HB 1365** by Lucio, which died in the Senate Health and Human Services Committee, would have expanded the number of entities that could dispense and eligible patients who could receive low-THC cannabis for medical use. The bill also would have exempted from certain offenses authorized persons who engaged in the medical use of low-THC cannabis and established the cannabis therapeutic research program. The HRO analysis of HB 1365 appeared in Part One of the May 6 *Daily Floor Report*.

**HB 122** by Hinojosa, which died in the House Public Health Committee, would have made it an affirmative defense to prosecution for the offense of cannabis possession if a person possessed it as a patient of a licensed physician pursuant to the physician's recommendation for the amelioration of symptoms of a medical condition or as the primary caregiver of such a patient. HB 122 was not analyzed in a *Daily Floor Report*.

**HB 4097** by Blanco, which died in the House Calendars Committee, would have allowed veterans suffering from post-traumatic stress disorder to purchase a permit allowing them to buy medical cannabis from an authorized cultivating or dispensing facility. HB 4097 was not analyzed in a *Daily Floor Report*.

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# Establishing Child Mental Health Care Consortium

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## SB 11 by Taylor

*Effective June 6, 2019*

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**SB 11** establishes the Texas Child Mental Health Care Consortium to facilitate access to mental health care services through telehealth and the child psychiatry access network. The consortium also expands the mental health workforce through training and funding opportunities.

**Consortium.** The bill establishes the Texas Child Mental Health Care Consortium to leverage the expertise and capacity of health-related institutions of higher education in the state to address urgent mental health challenges and improve the state's mental health care system. The consortium is administratively attached to the Texas Higher Education Coordinating Board (THECB) to receive and administer appropriations and other funds under the bill.

The consortium is composed of certain health-related institutions of higher education, the Health and Human Services Commission (HHSC), THECB, three nonprofit organizations focusing on mental health care, and any other entity the consortium's executive committee deems necessary.

**Executive committee and duties.** The consortium is governed by an executive committee that includes representatives with expertise in mental health care from HHSC and representatives of THECB, academic psychiatry departments, a Texas hospital system, and nonprofit organizations included in the consortium. Other representatives may be designated by the president of a health-related institution of higher education included in the consortium or by a majority of the representatives of academic psychiatry departments.

The executive committee must coordinate and monitor funding to the health-related higher education institutions included in the consortium. It also must establish procedures to document compliance by executive committee members and staff with applicable laws on conflicts of interest, among other duties.

**Child psychiatry access network and telehealth programs.** The consortium must establish a network of comprehensive child psychiatry access centers at health-related institutions of higher education included in the consortium. Centers must provide consultation services

and training opportunities for pediatricians and primary care providers operating in the centers' geographic regions to better care for youth with behavioral health needs.

The consortium also must establish or expand telemedicine or telehealth programs to identify and assess behavioral health needs and provide access to mental health care services with a focus on the behavioral health needs of at-risk children and adolescents.

The bill specifies that a person may provide mental health care services to a child younger than 18 years old through a child psychiatry access center or telehealth program established under the bill only if the person obtains written parental or guardian consent. The bill's consent requirements do not apply to certain services provided by a school counselor.

**Child mental health workforce.** The consortium's executive committee may provide funding to a health-related institution of higher education for two new resident rotation positions and for two full-time psychiatrists who treat children and adolescents to serve as academic medical directors at a facility operated by a community mental health provider. An academic medical director funded under the bill must collaborate and coordinate with a community mental health provider to expand the amount and availability of mental health care resources by developing training opportunities for residents and supervising residents at the facility operated by the community mental health provider.

The executive committee also may provide funding to health-related institutions of higher education to fund physician fellowship positions that will lead to a medical specialty in the diagnosis and treatment of psychiatric and associated behavioral health issues affecting children and adolescents. This funding must be used to increase the number of fellowship positions at the institution and may not be used to replace the institution's existing funding.

## Supporters said

SB 11 would address gaps in the state's mental health system in rural and urban areas by creating a mental health

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care consortium of health-related institutions of higher education as well as a child psychiatry access network. These resources would increase access to mental health services, enhance collaboration among health-related institutions and providers, and increase residency positions and mental health training opportunities for certain health providers. The bill would mitigate the impact of serious behavioral health conditions for youth by expanding early identification and intervention for behavioral health needs.

The bill would address the state's shortage of mental health providers by expanding telehealth programs, which could help identify children's mental health needs earlier. Identifying at-risk youth at a younger age could help decrease the use of medication, which is often a last resort for treatment, and help prevent youth from becoming a danger to themselves or others. The bill would establish clear parental consent requirements before certain services could be provided to individuals younger than 18 years old.

The child psychiatry access network would enhance collaboration among health providers, enabling pediatricians and primary care physicians to efficiently consult with mental health experts on treatment options. Primary care physicians frequently are the first providers to detect mental health issues, but many are not comfortable providing that type of care. Providing consultations and training opportunities for health providers would ensure they were equipped to address children's urgent mental health care needs or make the appropriate treatment referrals.

### Critics said

SB 11 is unnecessary and could result in negative health outcomes for youth with mental health issues. Establishing child psychiatry access centers at health-related institutions of higher education could create conflicts of interest by encouraging pharmaceutical intervention and lead to increased use of psychotropic medications for youth with mental health issues. The bill should include informed consent requirements before mental health services are provided to youth. Informed consent, rather than parental consent, is needed because it would require a detailed explanation of assessments and the risks and benefits of procedures before services could be provided.

The bill also would duplicate existing programs, such as the Telemedicine, Wellness, Intervention, Triage and Referral Project at the Texas Tech University Health

Science Center, which conducts mental health screenings of at-risk students. In addition, several medical schools across the state already participate in a mental health consortium that meets quarterly. Instead of appropriating funds for a new program, the state could improve and expand existing efforts.

The bill also should require the Texas Mental Health Care Consortium to be subject to the Texas Open Meetings Act and Public Information Act.

### Other critics said

SB 11 would not address the root cause of youths' distress. Rather than only providing funds for medical solutions to mental health issues, the Legislature should examine external factors, such as academic pressure and cyber-bullying, that could influence a student's behavioral health.

### Notes

**SB 10** by Nelson, which contained provisions establishing the mental health consortium, was recommitted to the House Committee on Public Health after a sustained point of order during consideration on the House floor. The provisions of SB 10 were later added as an amendment to SB 11. The HRO analysis of SB 10 appeared in Part Three of the May 21 *Daily Floor Report*. An analysis of SB 11's provisions regarding school safety and mental health policy appears on Page 144.

**HB 1** by Zerwas, the general appropriations act, appropriates \$99 million in fiscal 2020-21 for the Child Mental Health Care Consortium.

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# Revising human trafficking, prostitution statutes

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## SB 20 by Huffman

*Effective September 1, 2019*

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**SB 20** creates new offenses related to the promotion of prostitution, revises penalties for some prostitution offenses, revises procedures for orders of nondisclosure for certain victims of human trafficking, and requires the Health and Human Services Commission to establish a program for victims of child sex trafficking.

**Criminal penalties.** The bill creates two new criminal offenses: online promotion of prostitution and aggravated online promotion of prostitution. First offenses of online promotion of prostitution are third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000) with the penalty increased to a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) for subsequent offenses or offenses involving someone younger than 18 years old engaging in prostitution. First offenses of aggravated online promotion of prostitution are second-degree felonies, except that repeat offenses are first-degree felonies (life in prison or a sentence of 5 to 99 years and an optional fine of up to \$10,000). An offense also would be a first-degree felony if it involved two or more persons younger than 18 engaging in prostitution.

These new offenses also can be components of the offense of human trafficking. The bill makes continuous human trafficking a stackable offense so that if a defendant is found guilty of more than one offense from the same criminal episode, the sentences may run concurrently or consecutively.

**Mandatory probation for prostitution, sellers.** SB 20 requires judges to place on probation individuals convicted of certain offenses of prostitution for selling sex. Judges must require these defendants to participate in a commercially sexually exploited persons court program if one has been established where the defendants live. Requirements for prosecutors to agree and participants to consent to participation no longer apply, and judges may suspend program fees collected from participants. If a jury assesses punishment, the judge must follow the recommendations of the jury rather than the requirements of the bill.

**Orders of nondisclosure.** SB 20 revises statutes governing orders of nondisclosure for certain victims

of human trafficking. The bill expands provisions that previously applied only to defendants who were placed on community supervision (probation) and instead applies them to defendants who are convicted or placed on deferred adjudication. SB 20 also revises other requirements for an order of nondisclosure to be granted, including that a court find the order to be in the best interest of justice. The bill allows multiple requests for nondisclosure to be consolidated and filed in one court. Petitions for orders of nondisclosure must be filed at least one year after the victim completed a sentence or had the charges dismissed.

**Sex trafficking prevention and victim treatment programs.** SB 20 requires the Health and Human Services Commission to establish a program to improve the quality and accessibility of care for victims of child sex trafficking and to designate a health-related institution of higher education to operate the program. The commission must establish a matching grant program for cities that develop sex trafficking prevention programs. The bill also requires the governor's office to establish a grant program to train local law enforcement officers to recognize signs of sex trafficking.

## Supporters said

SB 20 would implement several recommendations of the Texas Human Trafficking Prevention Task Force, established in 2009. Texas has made strides in attacking this form of modern-day slavery and in supporting its victims, and the bill would continue this progress. The bill would strengthen prosecutions of human trafficking and related crimes and better protect victims and address their need for services and legal protections.

SB 20 would improve the prosecution of offenses that contribute to human trafficking by creating new offenses aimed at those who used the internet to promote prostitution. These new offenses would be targeted at traffickers and would give law enforcement the tools to go after websites that profit from advertising prostitution and trafficked individuals. The creation of these offenses also would help implement federal law.

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Sellers of prostitution often are victims of human trafficking, and the bill would acknowledge this by requiring that they receive probation for certain offenses. It would mandate that victims be connected to existing social services with support systems that could help change their lives, rather than simply being incarcerated. Special court programs would be the best portal to these services and could address victims' individual needs.

SB 20 would broaden and simplify the process by which victims of trafficking could obtain orders of nondisclosure. Allowing victims to keep their criminal records closed would help them put their lives back together without the collateral consequences that can accompany a criminal record. The bill has safeguards to ensure its provisions would be used in appropriate cases and to ensure judicial economy by allowing requests for nondisclosure of multiple records to be consolidated into one.

## Critics said

While SB 20 includes many provisions that would help the state fight human trafficking, some could reduce judicial discretion or impose inappropriate requirements on victims of prostitution and human trafficking.

Requiring certain prostitution offenders to receive probation would reduce judicial discretion. Courts already may impose probation when appropriate, and in other cases it may not be appropriate or defendants may want to choose jail time over probation.

SB 20 should not impose standard consequences for all trafficking victims placed on probation for prostitution. The law should allow individualized services, rather than require all of these victims to attend a special court program. The bill also should place more emphasis on pre-arrest diversion of human trafficking victims, who may have multiple encounters with the criminal justice system.

## Notes

The HRO analysis of SB 20 appeared in Part One of the May 21 *Daily Floor Report*.

**HB 1** by Zerwas, the general appropriations act, allocates about \$58.4 million for the prevention, investigation, and prosecution of human trafficking. This is an increase of \$39.6 million from fiscal 2018-19, according to the Legislative Budget Board. These funds

go to eight agencies: the Department of Public Safety, Alcoholic Beverage Commission, Department of Licensing and Regulation, Office of the Governor, Attorney General's Office, Department of Family and Protective Services, Department of State Health Services, and Department of Transportation. The general appropriations act also establishes a Human Trafficking Coordinating Council to develop and implement a five-year strategic plan for preventing human trafficking.

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# Expanding maternal care through the Healthy Texas Women program

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## SB 750 by Kolkhorst

*Effective June 10, 2019*

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**SB 750** requires the Health and Human Services Commission (HHSC) to expand prenatal and postpartum care services for certain women enrolled in the Healthy Texas Women program, which has been operated by HHSC since 2016 to expand access to preventive health and family planning services for low-income women. SB 750 also requires HHSC to assess the feasibility of providing Healthy Texas Women program services through Medicaid managed care.

**Prenatal and postpartum care.** HHSC, in collaboration with its contracted Medicaid managed care organizations, must develop and implement cost-effective, evidence-based, and enhanced prenatal services for high-risk pregnant women covered under Medicaid.

It must evaluate postpartum care services provided to women enrolled in the Healthy Texas Women program after the first 60 days postpartum. Based on the evaluation, HHSC must develop a limited postpartum care services package to be provided for enrolled women after the first 60 days postpartum and for up to 12 months after their date of enrollment in Healthy Texas Women.

**Maternal health.** The bill requires HHSC to assess the feasibility and cost-effectiveness of providing Healthy Texas Women program services through Medicaid managed care in one or more health care service regions if the Healthy Texas Women section 1115 demonstration waiver is approved by the federal government.

Using money from available sources and in collaboration with managed care organizations and health care providers who participate in the Healthy Texas Women program, HHSC must develop and implement a postpartum depression treatment network for women enrolled in Medicaid or the program.

**Statewide initiatives.** HHSC must develop or enhance statewide initiatives to improve maternal healthcare services and outcomes for women in the state. It must specify the initiatives that each contracted managed care organization had to include in the organization's plans.

The initiatives may address:

- prenatal and postpartum care rates;
- maternal health disparities for minority women and other high-risk populations of women;
- social determinants of health, defined as environmental conditions that affect an individual's health and quality of life; and
- other priorities specified by HHSC.

**Medicaid funds.** As soon as practicable, HHSC must apply to the Centers for Medicare and Medicaid Services to receive any federal money available to implement a model of care that improves the quality and accessibility of care for pregnant women with opioid use disorder enrolled in Medicaid during the prenatal and postpartum periods and their children after birth.

**Review committee.** The bill changes the name of the "Maternal Mortality and Morbidity Task Force" to the "Texas Maternal Mortality and Morbidity Review Committee." For cases of severe maternal mortality that the Department of State Health Services (DSHS) selects for the committee to review, the bill establishes that requested medical records must be submitted to the department within 30 days of the request. The bill also creates an exception under which certain confidential information acquired by DSHS regarding a pregnancy-related death or severe maternal morbidity could be disclosed to an appropriate federal agency for the limited purpose of complying with applicable federal requirements.

## Supporters said

SB 750 would help decrease maternal mortality and childhood deaths in Texas by expanding programs to serve new, low-income mothers, especially those at greatest risk of complications. Expanding prenatal and postpartum care services was a recommendation in the 2018 joint report by the Maternal Mortality and Morbidity Task Force and DSHS. Reports have indicated that preventable or treatable conditions like infections and heart disease are

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the leading factors contributing to maternal mortality. Identifying high-risk women and providing prenatal and postpartum care through the Healthy Texas Women program could help them to effectively manage their pregnancies and prevent worsening morbidities or potential death.

**HB 744** by Rose, which died in the Senate, would have continued Medicaid for all pregnant women eligible for Medicaid for 12 months after a pregnancy. The HRO analysis of HB 744 appeared in Part One of the May 9 *Daily Floor Report*.

## Critics said

SB 750 would allocate state funds to programs that were outside the core function of government and that should be used for other budget priorities.

## Notes

The HRO analysis of SB 750 appeared in Part One of the May 20 *Daily Floor Report*.

The 86th Legislature considered several other bills based on recommendations from the 2018 joint biennial report by the Maternal Mortality and Morbidity Task Force and DSHS.

**SB 748** by Kolkhorst, effective September 1, 2019, creates a general revenue dedicated account to fund newborn screenings conducted by DSHS. **SB 749** by Kolkhorst, signed by the governor on June 10 and effective immediately, designates levels of neonatal and maternal care for hospitals and amends the Perinatal Advisory Council. The HRO analyses of SB 748 and SB 749 appeared in Part One of the May 20 *Daily Floor Report*.

**HB 253** by Farrar, effective September 1, 2019, establishes a strategic plan to address postpartum depression. The HRO analysis of HB 253 appeared in Part One of the April 15 *Daily Floor Report*.

**HB 1111** by S. Davis, which died in the Senate, would have established medical homes, high-risk maternal care coordinated services pilot programs, and telehealth programs for prenatal and postpartum care in certain areas. The HRO analysis of HB 1111 appeared in Part Three of the April 25 *Daily Floor Report*.

**HB 1589** by Ortega, which died in the Senate, would have required the Health and Human Services Commission to notify certain eligible women during the third trimester of their pregnancy, if feasible, that they were automatically enrolled in the Healthy Texas Women program. The HRO analysis of HB 1589 appeared in Part One of the April 16 *Daily Floor Report*.



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# Prohibiting balance billing and creating arbitration and mediation systems

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## SB 1264 by Hancock

Effective September 1, 2019

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**SB 1264** prohibits certain health benefit insurers from balance billing enrollees, requires health benefit plans to cover certain out-of-network services at the usual and customary rate, requires the Texas Department of Insurance (TDI) to establish a mediation program between health plans and out-of-network providers that are facilities, and creates an arbitration system between health plans and out-of-network providers that are not facilities.

The bill applies to a health benefit plan offered by a health maintenance organization, a preferred provider benefit plan offered by an insurer, a managed care plan offered by the Texas Group Benefits Program or Texas Public School Employees Group Insurance Program, and a health plan offered by the Texas School Employees Uniform Group Health Coverage Program.

**Definitions.** The bill defines “arbitration” as a process in which an impartial arbiter issues a binding determination in a dispute between a health benefit plan issuer or administrator and an out-of-network provider or the provider’s representative to settle a health benefit claim.

“Out-of-network provider” is defined as a diagnostic imaging provider, emergency care provider, facility-based provider, or laboratory service provider that is not a participating provider for a health benefit plan.

**Balance billing.** The bill prohibits an out-of-network provider from billing an enrollee who is receiving a service or supply at an amount greater than an applicable copayment, coinsurance, and deductible under the enrollee’s health care plan. The billed amount may not be based on any additional amount determined in the out-of-network claim dispute resolution process.

This prohibition does not apply to nonemergency health care that an enrollee elects to receive in writing in advance of the service provided by each out-of-network provider and for which an out-of-network provider delivers a written disclosure to the enrollee. The disclosure must explain that the provider does not have a contract with the enrollee’s health plan, disclose projected amounts for which the enrollee may be responsible, and disclose the

circumstances under which the enrollee will be responsible for those amounts.

**Payment.** Insurers must cover emergency care or a related supply provided to an enrollee by out-of-network providers at the usual and customary rate or an agreed rate if the service is performed at a health care facility that is a network provider. Insurers also must cover care from a facility-based provider, diagnostic imaging, and laboratory services at the usual and customary rate or at an agreed rate. The usual and customary rate is defined as the relevant allowable amount as described by a master benefit plan document or policy.

Insurers must make a payment directly to the provider by the 30th day after the insurer receives an electronic clean claim or by the 45th day after the insurer receives a nonelectronic clean claim.

**Notice.** Insurers must provide a written notice in an explanation of benefits provided to the enrollee and the out-of-network provider in connection with the provided health care service or supply. The notice must include a statement of the billing prohibition as well as the total amount the provider may bill the enrollee under the enrollee’s health benefit plan and an itemization of copayments, coinsurance, deductibles, and other amounts included in that total. In the notice to the provider, insurers must include information in the notice advising the provider of the availability of mediation or arbitration.

**Enforcement.** The attorney general may bring a civil action against an individual or entity who violates the prohibition on balance billing. Certain regulatory agencies also may take disciplinary action against a physician, practitioner, facility, or provider who violates the prohibition. The Texas Department of Insurance may take disciplinary action against a health benefit plan issuer or administrator that fails to provide notice of a balance billing prohibition or make a related disclosure.

**Mandatory mediation.** SB 1264 requires the insurance commissioner to establish and administer a mediation program to resolve disputes about out-of-

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network charges by providers that are facilities. Out-of-network providers or health benefit plan issuers or administrators may request mediation through a portal on TDI's website if:

- there is an amount billed by the provider and unpaid by the issuer or administrator after copayments, deductibles, and coinsurance for which an enrollee may not be billed; and
- the health benefit claim is for emergency care or an out-of-network laboratory or diagnostic imaging service.

If a person requests mediation, the out-of-network provider and the health plan issuer or administrator must participate. The person requesting mediation must provide written notice to TDI and each other party.

Within 45 days after the mediator's report is provided to the department, either party to a mediation for which there was no agreement may file a civil action to determine the amount due to an out-of-network provider. Parties may not bring a civil action before the conclusion of the mediation process.

**Mandatory arbitration.** SB 1264 requires the insurance commissioner to establish and administer an arbitration program to resolve disputes about out-of-network charges by providers that are not facilities.

Under the bill, the only issue an arbitrator may determine is the reasonable amount for the health care or medical services or supplies provided to the enrollee by an out-of-network provider. The determination must take into account whether there was a gross disparity among fees billed by the out-of-network provider, paid to the provider, and paid by the health benefit plan issuer. The determination also must consider:

- the out-of-network provider's usual billed charge for comparable services or supplies to other enrollees; and
- the 80th percentile of all billed charges for the service or supply performed by a health care provider in the same or similar specialty and provided in the same geozip area as reported in the benchmarking database.

Within 90 days of receiving the initial payment for a health care service or supply, an out-of-network provider or a health benefit plan issuer or administrator may request arbitration of a settlement of an out-of-network health benefit claim through a portal on TDI's website if the

claim meets certain requirements. If a person requests arbitration, the out-of-network provider and health benefit plan issuer or administrator must participate in the arbitration. The person requesting the arbitration must provide written notice to TDI and each other party.

Within 51 days of the date that the arbitration is requested, an arbitrator must issue a written decision determining whether the billed charge or payment made is closest to the reasonable amount for the services or supplies. The arbitrator must select whichever is closest to the reasonable amount as the binding award amount.

Out-of-network providers and health benefit plan issuers or administrators may not file suit for an out-of-network claim until the conclusion of arbitration. Within 45 days of the arbitrator's decision, a party dissatisfied with the decision may file an action to determine the payment due to an out-of-network provider.

## Supporters said

SB 1264 would protect Texans from surprise medical billings. When patients cannot choose their medical care providers, such as in emergency situations, they may unknowingly get care out of their network. They could be treated by an out-of-network physician at an in-network facility or be transported to the nearest facility for emergency care. When an insurance company fails to cover the cost of the service, the provider then bills the patient for the remaining balance and it is the patient's responsibility to contest the bill. This balance billing would be prohibited under SB 1264, relieving consumers of these surprise medical bills. Instead of billing the patient, the provider would have to go through a process of mediation or arbitration with the insurer until a price was agreed upon.

Requiring the mediation or arbitration processes to take place between the insurer and provider would relieve consumers of the stress, confusion, and difficulty of having to navigate the mediation process and would protect consumers from unexpected high costs associated with care that they either had no choice in receiving or that they thought was covered under their health insurance.

The bill also would incentivize compliance by allowing the attorney general to bring a civil action against any entity that violated the prohibition on balance billing. Regulatory agencies also would be required to enforce the prohibition, giving the bill the penalties necessary for it to be successful.

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The bill would use “baseball-style arbitration,” which requires each party to suggest to the arbiter a price the party considers reasonable and the arbiter choosing the more reasonable rate between the two. In other states, this style of arbitration has led to a decrease in both physician charges and out-of-network billing.

## Critics said

SB 1264 would not solve the central cause of surprise medical billing because it would not create a standard billing rate for services. Instead, the bill should define a usual and customary rate as no more than the 80th percentile of billed charges of all physicians or health care providers in the region. Without defining rates, the arbiters, insurance companies, and providers would have no reference point for what a reasonable charge would be and too many claims would have to be arbitrated through this system. Providing a reference point would allow for fewer claims and a more transparent and streamlined system.

## Other critics said

Rather than the 80th percentile of billed charges, SB 1264 should set rates based on other government rates, such as Medicaid. Using government rates as a starting point would mean a fairer rate for all parties involved.

## Notes

The HRO analysis of SB 1264 appeared in Part One of the May 20 *Daily Floor Report*.

**SB 1037** by Taylor, effective May 31, 2019, prohibits a consumer reporting agency from providing a report containing information on a consumer’s collection account for an outstanding balance, after copayments, deductibles, and coinsurance, owed to certain health providers for an out-of-network claim. SB 1037 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.



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# Higher Education

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\*Finally approved

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# Increasing assistance for physician education loan repayment program

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## HB 2261 by Walle

*Effective September 1, 2019*

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**HB 2261** increases the amount of money a physician may receive under the Texas Higher Education Coordinating Board's physician education loan repayment program. The program, established to provide financial assistance to qualifying physicians for their educational debt, currently allows a physician to receive up to \$25,000 for the first year, increasing to \$55,000 by the fourth year; under the bill, the amount for each year is increased by \$5,000. The program increases the amount received in the first year from \$25,000 to \$30,000, with the amount increasing by the fourth year to \$60,000, rather than \$55,000. Total repayment assistance for an individual physician increases from \$160,000 to \$180,000.

### Supporters said

HB 2261 would help alleviate the physician shortage in Texas by providing greater loan repayment assistance to qualifying physicians. These programs have been successful at attracting doctors to rural areas and addressing the high cost of graduate medical education. Increasing the amount of available assistance would continue to incentivize physicians to work in underserved areas and would allow rural areas to compete with urban and suburban centers for quality physicians.

Physicians often graduate with a heavy debt load, and many have left Texas upon graduation for more lucrative family practices in other states. Increasing financial assistance would entice physicians to remain in Texas.

### Critics said

HB 2261 would allow for the continued use of tax dollars to subsidize educational costs for medical professionals. If individuals choose to take on debt to pay for their education, they should be responsible for repayment.

### Notes

The HRO analysis of HB 2261 appeared in Part Two of the April 8 *Daily Floor Report*.

The 86th Legislature considered other bills related to increasing the number of physicians.

**HB 80** by Ortega, effective September 1, 2019, requires the Texas Higher Education Coordinating Board to conduct a study of regional shortages in certain health professions, particularly with regard to positions requiring doctoral-level training. The HRO analysis of HB 80 appeared in Part Two of the April 15 *Daily Floor Report*.

**HB 1065** by Ashby, effective June 10, 2019, establishes a rural resident physician grant program to encourage new graduate medical education positions in rural areas, with an emphasis on rural training tracks. The HRO analysis of HB 1065 appeared in the April 11 *Daily Floor Report*.

**HB 826** by Zerwas, effective May 1, 2019, creates the University of Houston College of Medicine to facilitate the instruction of primary care physicians and to place the physicians in residencies in underserved areas. The HRO analysis of HB 826 appeared in the April 1 *Daily Floor Report*.

**HB 2867** by Metcalf, effective May 29, 2019, establishes the Sam Houston State University College of Osteopathic Medicine to place graduate medical students in clinics and community health centers in rural and underserved areas. The HRO analysis of HB 2867 appeared in the April 4 *Daily Floor Report*.

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# Protecting expressive activities at public higher education institutions

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**SB 18 by Huffman**

*Effective September 1, 2019*

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**SB 18** establishes requirements related to speech and expressive conduct protected by the First Amendment on public campuses of higher education institutions.

The bill establishes that it is state policy to protect the expressive rights of persons guaranteed by the U.S. and Texas constitutions by recognizing freedom of speech and assembly as central to the mission of institutions of higher education and ensuring that all persons may assemble peaceably on the campuses of institutions of higher education for expressive activities, including to listen to the speech of others.

**Common outdoor areas.** An institution of higher education must ensure that the common outdoor areas of its campus are deemed traditional public forums. Any person must be permitted to engage in expressive activities in those areas freely, as long as the person's conduct is not unlawful and does not materially and substantially disrupt the functioning of the institution. An institution may adopt a policy that imposes reasonable restrictions on the time, place, and manner of expressive activities if those restrictions:

- are narrowly tailored to serve a significant institutional interest;
- employ clear, published, content-neutral, and viewpoint-neutral criteria;
- provide for ample alternative means of expression; and
- allow members of the university community to assemble or distribute written material without a permit or other permission from the institution.

The requirements for common outdoor areas do not limit the right of student expression at other campus locations or prohibit faculty members from maintaining order in the classroom.

**Student rights and responsibilities.** Each institution must adopt a policy by August 1, 2020, detailing students' rights and responsibilities regarding expressive activities.

The policy must allow:

- any person, subject to reasonable restrictions, to engage in expressive activities on campus, including by responding to the expressive activities of others; and
- student organizations and faculty to invite speakers to speak on campus.

The policy also must establish disciplinary sanctions for students, student organizations, and faculty who unduly interfere with the expressive activities of others and must include a grievance procedure for addressing complaints. The policy must be approved by a majority vote of the institution's governing board and be posted on the institution's website.

An institution may not take action against a student organization or deny the organization any benefit generally available to other student organizations on the basis of a political, religious, philosophical, ideological, or academic viewpoint expressed by the organization or of any expressive activities of the organization.

**Guest speakers.** In determining whether to approve a speaker or the fee charged for facilities use, an institution may consider only content-neutral and viewpoint-neutral criteria related to the needs of the event, such as the proposed venue and expected size of the audience, any anticipated need for campus security, any necessary accommodations, and any relevant history of compliance or noncompliance with the institution's policy on expressive activities.

## Supporters said

SB 18 would promote civility, respect, and safety for those expressing diverse views on public college and university campuses by recognizing that the First Amendment applies to all speech, even that deemed unpopular or contentious. The bill would bolster free speech protections on college campuses by ensuring that constitutionally protected expression existed in common

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outdoor areas and that higher education institutions could not make decisions about guest speakers based on the speaker's viewpoint.

The bill would ensure that common outdoor areas were deemed to be traditional public forums and permit any individual to engage freely in expressive activities there as long as the person's conduct was lawful and did not disrupt the functioning of the institution. Institutions could exert control over common outdoor areas by adopting a policy that imposed reasonable restrictions on time, place, and manner of expressive activities in common outdoor areas as long as the restrictions were narrowly tailored, content neutral, and provided for alternative means of expression. The bill would address reports that students have been told they need campus approval to distribute flyers by specifically allowing members of the university community to assemble or distribute written material without a permit in common outdoor areas.

SB 18 would ensure that students, faculty, and staff knew their rights and responsibilities by requiring institutions to adopt a policy that included disciplinary sanctions for students, student organizations, or faculty who unduly interfered with others' free speech rights. Institutions would have sufficient discretion to adopt the disciplinary policy and a grievance procedure for addressing complaints about free speech violations.

The bill would prevent campuses from making decisions about scheduling speakers or charging higher fees to student groups sponsoring a speaker based on any anticipated controversy related to the event. An institution would retain the ability to consider any anticipated need for campus security when determining whether or not to approve a guest speaker or charge a fee to the sponsoring student organization.

### **Critics said**

SB 18 would change Texas campuses from appropriately limited public forums where the free speech rights of the campus community are protected to traditional public forums where the rights of persons who were not attending classes or working on campus were equally protected, which could be detrimental to the campus community. Federal courts have declined to treat a campus the same as a public park for First Amendment purposes. The bill would primarily benefit those not attending a university by making campuses open to outside groups that could spread offensive ideology or a political agenda.

The bill could negatively impact the experience of students who are paying tuition and fees to attend a university by allowing outside groups who might express views that are anathema to the values of the campus community. There would be little that campus officials could do to stop such activity if it did not meet the bill's high bar of substantially disrupting the function of the institution.

The perception that certain voices are being stifled on college campuses does not match reality, as speakers of a variety of political affiliations commonly appear and students regularly discuss contentious issues under existing policies.

The bill's requirements for a grievance process to handle complaints should be limited to complaints from students, faculty, and staff of the university. Allowing any person to file a complaint could create an unnecessary and possibly heavy burden on universities.

### **Notes**

The HRO analysis of SB 18 appeared in Part One of the May 17 *Daily Floor Report*.



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# Facilitating college course credit transferability

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## SB 25 by West

*Effective September 1, 2019*

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**SB 25** requires general academic teaching institutions and junior colleges to report to the Texas Higher Education Coordinating Board and the Legislature details about courses the institutions will not accept for transfer credit. Higher education institutions must develop at least one recommended course sequence for each major offered. The bill also requires all public college students, not just those attending community college, to file degree plans after earning 30 semester credit hours.

**Reporting.** The bill requires general academic teaching institutions to report on nontransferable credit and junior colleges to report on courses taken by certain students. The reports are due to the coordinating board and the Legislature by March 1 of each year beginning in 2021.

**Nontransferable credit.** In their reports, general academic teaching institutions must describe any lower-division academic courses for which a transfer student was not granted academic credit at the receiving institution or was not granted academic credit toward the student's major. The reports must include:

- the course name and type;
- which institution of higher education provided academic credit for the course; and
- the reason the receiving institution did not grant academic credit for the course.

**Junior college courses.** Each public junior college must submit a report to the coordinating board and the Legislature on the courses taken by students who, during the preceding academic year, transferred to a general academic teaching institution or earned an associate degree at the college. These reports must include the number of courses attempted and completed that:

- were in the coordinating board's Workforce Education Course Guide Manual or the Lower-Division Academic Course Guide Manual;
- were not in the coordinating board's recommended core curriculum; and
- were dual credit courses for joint high school and junior college credit.

**Common admission form.** Under SB 25, the coordinating board must ensure when adopting a Texas common application form that an applicant can consent for the form to be submitted to other public higher education institutions that offer the applicant's degree program if the institution to which the application was originally submitted denies the applicant admission to that degree program.

**Degree plans.** SB 25 requires all students enrolled in an associate or bachelor's degree program at a public higher education institution to file a degree plan after earning 30 semester credit hours. Dual-credit students who are not enrolled in an associate or bachelor's degree program must file a degree plan after earning 15 semester credit hours.

**Recommended course sequences.** Under the bill, each higher education institution must develop at least one recommended course sequence for each undergraduate certificate or degree program it offers. Each sequence must identify all required lower-division courses and their course numbers or equivalents under the common course numbering system; be designed to enable a full-time student to obtain a certificate or degree within two or four years; and specify the sequence in which courses should be completed.

The recommended sequences must be included in the institution's course catalog and on its website and be submitted to the coordinating board.

**Student information.** The bill allows school districts and higher education institutions to release student information to an institution for purposes of transferring course credit in accordance with federal and state student privacy laws.

**Study on core curriculum.** SB 25 requires the coordinating board to study and make recommendations to the Legislature on the feasibility of implementing statewide meta majors for institutions of higher education in specified academic disciplines. The bill defines "meta major" as a collection of programs of study or academic disciplines that share common foundational skills.

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The coordinating board must establish an advisory committee to assist with the study and to provide subject matter expertise and analysis. The study must analyze the efficacy of dividing the recommended core curriculum for each meta major into a general academic core curriculum and an academic discipline core curriculum. The report is due by November 1, 2020, and the advisory committee must submit quarterly updates on the progress of the study to certain legislative committee chairs.

The bill applies beginning with the 2019-2020 academic year, except that provisions related to recommended course sequences apply beginning with the 2021-2022 academic year.

### **Supporters said**

SB 25 would encourage the timely completion of college degrees and lower student debt by helping community college students planning to transfer to a four-year university select courses likely to apply to their intended major. The accumulation of excess credit hours that either do not transfer or do not apply to a student's major is costing students and taxpayers millions of dollars each year. Ensuring efficient transfer pathways among Texas institutions of higher education is critical to meeting the state's goal of having 60 percent of Texans ages 25 to 34 with a certificate or degree by 2030.

The bill would establish a reporting requirement for general academic institutions and community colleges to provide the state with data that could be used to develop policies to improve transferability. By requiring universities to report the courses they did not accept for transfer credit, the bill would help the Legislature gain a better understanding of the specific challenges of improving student transfer pathways.

Student advising would be improved by the bill's requirement that all students in public higher education institutions file a degree plan after completing 30 semester credit hours rather than the current 45 hours. This would be in line with current requirements for community college students to file a degree plan at 30 hours. The bill also would ensure the growing number of high school students taking dual-credit courses did not accumulate excess college credit by requiring them to file degree plans after earning 15 credit hours. In addition, SB 25 would help students select the best courses for their major by requiring higher education institutions to develop at least one recommended course sequence for each undergraduate degree they offer.

### **Critics said**

No concerns identified.

### **Notes**

The HRO analysis of SB 25 appeared in Part Three of the May 20 *Daily Floor Report*.

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# Requiring the reporting of sexual assault allegations

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## SB 212 by Huffman

*Generally effective September 1, 2019*

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**SB 212** requires employees of Texas institutions of higher education to report certain incidents of sexual harassment, sexual assault, dating violence, or stalking against a student or employee to the institution's Title IX coordinator. The bill creates an offense for failure to report an incident or making a false report.

**Incident reporting.** SB 212 requires an employee of a public, private, or independent postsecondary institution who witnesses or receives information about an incident that the employee reasonably believes constitutes sexual harassment or assault, dating violence, or stalking against a student or employee to report the incident to the institution's Title IX coordinator or deputy coordinator. The report must include all relevant information about the incident and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality.

An employee designated as a person with whom students can speak confidentially or who receives information under circumstances that render the employee's communications confidential or privileged under other law must, in making a report, state only the type of incident reported and cannot include any information that violates a student's expectation of privacy. An employee's duty to report such incidents under any other law is not affected by the bill.

Individuals are not required to make a report on an incident in which they themselves are the victim or to make a report on a disclosure made at a public awareness event sponsored by a postsecondary educational institution or by a student organization.

At least once every three months, an institution's Title IX coordinator must submit to the institution's chief executive officer a written report on the incident reports received, including information on the investigation of those reports, dispositions of any disciplinary processes, and the reports, if any, for which the institution determined not to initiate a disciplinary process. A Title IX coordinator or deputy coordinator must immediately report to the institution's CEO an incident that the coordinator believes might put the safety of any person in imminent danger. At least once during each fall or

spring semester, the CEO must submit to the institution's governing body and post on the institution's website a report with certain information about the number of reported incidents and any resulting disciplinary action.

Under the bill, the identity of an alleged victim of a reported incident must be confidential unless confidentiality is waived by the alleged victim. An alleged victim's identity is not subject to Texas public information laws and may be disclosed only to certain persons involved in related investigations or hearings.

An institution may not discipline or otherwise discriminate against an employee who makes a good faith report to the institution's Title IX coordinator or cooperates with a resulting investigation, disciplinary process, or judicial proceeding. A person who acts in good faith to report or assist in the investigation of an incident or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from an incident is immune from civil liability and criminal liability for fine-only offenses that might otherwise be imposed as a result of those actions. Immunities provided by the bill do not apply to a person who perpetrated or assisted in the perpetration of the reported incident.

**Offenses.** SB 212 makes it an offense for a person who is required to make a report to the Title IX coordinator to knowingly fail to make a report or knowingly file a false report with the intent to harm or deceive. Such an offense is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). If it is shown at trial that the actor intended to conceal the incident the offense would be a class A misdemeanor (up to one year in jail and/or maximum fine of \$4,000). An institution is required to terminate an employee whom it determines has committed such an offense.

**Compliance.** The CEO of each institution must annually certify in writing to the Texas Higher Education Coordinating Board that it is in substantial compliance with the bill's requirements. If the coordinating board determines that an institution is not in substantial compliance, it may assess an administrative penalty of up to \$2 million. The coordinating board must annually submit to the governor, lieutenant governor, House

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speaker, and relevant standing committees a compliance report. The first report is due January 1, 2021.

## Supporters said

SB 212 would provide a safe and reliable structure for reporting sexual assault, sexual harassment, dating violence, and stalking against college students and employees. While studies have shown that as many as one in five women experience some form of sexual assault while in college, actual data is lacking. The reporting required by the bill would establish the prevalence of these incidents and raise awareness. It would ensure that universities did not cover up incidents. As victims learn they are not alone, more are likely to come forward and report.

Most Texas higher education institutions already require certain employees to report sexual assault to the institution's Title IX office. SB 212 would ensure uniformity in reporting from institutions throughout the state. Title IX coordinators would be required to report to the institution's president all reported incidents, including their investigation and disposition. The information would be publicly reported on each institution's website so students knew the extent of the problem on their campus.

## Critics said

SB 212, while well intentioned, could result in deficiencies in investigating and prosecuting sexual assault and related crimes at universities. The reporting requirements of SB 212 are overly broad and could require employees to report even rumors of sexual incidents. This could lead to over-reporting by employees concerned about a criminal offense for failure to report an incident. Universities would have difficulty investigating rumored or fabricated reports. It is not the role of state government to mandate reporting requirements for private colleges and universities.

University Title IX offices are not the appropriate places for investigating crimes that would be better addressed by law enforcement authorities who have the training and resources to determine if charges should be filed.

## Notes

The HRO analysis of SB 212 appeared in Part One of the May 20 *Daily Floor Report*.

Another bill related to campus sexual assault, **HB 1735** by Howard, effective September 1, 2019, revises requirements for public and private higher education institutions to establish a policy on sexual harassment, sexual assault, dating violence, and stalking applicable to students and employees. The bill establishes requirements for an institution that initiates a disciplinary process for a student accused of committing such an offense to provide the student and the alleged victim a prompt and equitable opportunity to present witnesses and other relevant evidence during the disciplinary process. The HRO analysis of HB 1735 appeared in the April 16 *Daily Floor Report*.

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# Natural Resources and Environment

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*SB 627 by Birdwell		
*Finally approved		

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# Extending TERP surcharges, creating TERP trust fund

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## HB 3745 by C. Bell

*Effective August 30, 2019, except provisions creating TERP trust fund take effect September 1, 2021*

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HB 3745 extends the expiration date of Texas Emissions Reduction Plan (TERP) surcharges and fees from September 1, 2019, to the last day of the fiscal biennium in which the state attains compliance with federal ambient air quality standards for ground-level ozone.

The bill also creates the Texas Emissions Reduction Plan Fund as a trust fund outside the state treasury held by the comptroller and administered by the Texas Commission on Environmental Quality (TCEQ) as trustee. Money in the fund may be spent without legislative appropriation and used only to implement and administer TERP programs according to current law.

The bill specifies that the TERP “fund” is the trust fund and the TERP “account” is the account administered under Health and Safety Code sec. 386.251, from which the Legislature may appropriate funds.

The TERP fund consists of:

- contributions paid by site owners or operators for generating nitrous oxide emissions in certain nonattainment areas;
- surcharges and fees assessed for TERP; and
- grant money recaptured under the Diesel Emissions Reduction Incentive Program and the New Technology Implementation Grant Program.

TCEQ must transfer the unencumbered balance of the TERP fund to the credit of the TERP account within 30 days after the end of each fiscal biennium.

The bill also increases from \$8 million to \$16 million the amount that may be used from the trust fund or account by TCEQ for administrative costs.

## Supporters said

HB 3745 would ensure that the full amount of the fees paid by Texans to the Texas Emissions Reduction Plan (TERP) were correctly used under state law. TERP

provides funding for certain programs intended to improve air quality in regions designated as “nonattainment” areas by the federal Environmental Protection Agency (EPA), including Dallas, El Paso, Houston, and San Antonio. As the EPA continues to impose stricter ozone standards for ambient air quality, more areas of the state are considered to be in nonattainment, furthering the need for TERP.

TERP is funded by the collection of certain fees and surcharges on vehicle titles, heavy-duty vehicles and equipment, and the registration and inspection of commercial vehicles, which are deposited into a dedicated account. Appropriations are made from the dedicated account to each TERP program at the Legislature’s discretion during the budgeting process. Because more funds are collected for TERP than are appropriated, the TERP dedicated account has ballooned while certain TERP programs do not receive necessary funds and regions remain in nonattainment.

HB 3745 would ensure the continuation of TERP by extending the surcharges and fees dedicated to TERP until the end of the biennium in which every region of the state attained federal air quality standards. The bill also would end the funding gap between TERP revenue and appropriations by creating a new trust fund outside the state treasury and directing future TERP fees and surcharges to this fund. The balance of the trust fund could pay for TERP authorized programs without legislative appropriation. At the end of each biennium, unencumbered balances in the trust fund would be transferred to the dedicated account and would be available for certification of the budget.

Concerns that the bill could take money away from transportation projects are unfounded. Transfers from the State Highway Fund already are made to TERP; the bill simply would continue that funding stream until the state had gained attainment in all regions and the program expired. Further, while funds are required to be transferred from the State Highway Fund, an equal amount of revenue from the collection of certain vehicle title fees are directed to the Texas Mobility Fund and may be used for transportation projects.

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## Critics said

HB 3745 would extend the diversion of funds which could be used for necessary transportation projects in the state away from the State Highway Fund (SHF) to TERP. Between fiscal 2009 and 2017, about \$860 million was transferred from the SHF to TERP, and the yearly contribution from the fund will continue to grow annually based on historical patterns. The extension of this funding mechanism until the state attains national ambient air quality standards could mean that the diversion of SHF funds would continue indefinitely. Certain nonattainment areas of the state, such as El Paso, have air quality issues caused by an increasing population rather than existing manufacturing operations. There is no evidence that TERP programs will be able to curb emissions given the state's increasing population, so the transfer of SHF funds to TERP may continue in perpetuity. If the bill passes, a total of \$1.4 billion could be transferred to TERP in the next 10 fiscal years, funds that have already been planned to be used for certain transportation projects.

## Notes

The HRO analysis of HB 3745 appeared in Part One of the May 1 *Daily Floor Report*.

**HB 1** by Zerwas, the general appropriations act, appropriates \$77.4 million in fiscal 2020 and \$77.37 million in fiscal 2021 for TERP programs.

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# Dedicating sporting goods sales tax to parks and historical sites

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## **SJR 24 and SB 26 by Kolkhorst**

*Generally effective September 1, 2021*

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**SJR 24** amends the Texas Constitution to automatically appropriate to the Texas Parks and Wildlife Department (TPWD) and the Texas Historical Commission (THC) the net revenue collected from any state taxes imposed on the sale, storage, use, or consumption of sporting goods as provided by general law.

The Legislature may limit the use of sporting goods sales tax funds and, by adoption of a resolution approved by two-thirds of the membership of each house, may direct the comptroller to reduce the amount that would otherwise be appropriated to TPWD and THC by up to 50 percent. The comptroller may make that reduction only in the year such a resolution was adopted or in the following two fiscal years. Funds automatically appropriated to TPWD and THC may not be considered available for certification of the budget.

**SB 26**, the enabling legislation for SJR 24, requires the Legislature to allocate money generated from the sporting goods sales tax and credited to TPWD to department accounts in amounts specified by the general appropriations act.

The bill expands the authorized uses of the TPWD accounts to include paying debt service on park-related bonds and specifies how the accounts may be used to fund the state contribution for certain employee benefit-related costs.

SB 26 makes the Historic Site Account a dedicated account in the general revenue fund effective January 1, 2020. The bill also removes provisions exempting the account from statutory requirements on dedicated accounts and requiring money not used in a fiscal year to remain in the account.

### **Supporters said**

SB 26 and SJR 24 would ensure that the statutory allocation of the sales tax on sporting goods was used as intended by automatically appropriating the money to the

Texas Parks and Wildlife Department (TPWD) and Texas Historical Commission (THC). The state parks system deserves a constitutionally protected source of revenue to fulfill promises made when the Legislature allocated the existing sales tax on sporting goods to funding for state parks and historic sites. Since 2007, the Legislature has often diverted a significant portion of the sporting goods sales tax statutorily allocated for parks to other budgetary purposes.

The bills would provide sustained and predictable funding to help TPWD plan for an estimated \$800 million backlog of deferred maintenance priorities, including repairing damage to park facilities from flooding and other natural disasters. Consistent funding also would allow TPWD to meet demands for construction of new state parks and for upgrades to existing parks for a growing population. Parks play an important role in wildlife habitat and conservation and have a large economic impact through outdoor sporting, hunting, fishing, and tourism. The Texas Historical Commission has a \$40 million backlog of deferred maintenance and also needs a reliable source of revenue to maintain its historic sites.

Because constitutionally dedicated appropriations from the sporting goods sales tax could be temporarily reduced with a two-thirds vote of the House and Senate, the bills would accomplish these goals without unnecessarily tying the hands of the Legislature and compromising the state's ability to fund critical services. The Legislature also would maintain the power to determine the specific uses of the funds in accordance with existing statutory provisions.

### **Critics said**

By creating constitutionally dedicated accounts, SB 26 and SJR 24 would diminish the Legislature's discretion to prioritize state needs when budgeting. Dedicated accounts give appropriators less flexibility in allocating funds and could lead to unnecessary growth of the state budget by requiring money to go to a particular area even



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if needs were greater in another. The bills also could create a precedent for requesting constitutional amendments to create other general revenue dedicated accounts.

SJR 24 and its enabling legislation also are unnecessary because the Legislature already may spend all or nearly all of the revenue from the sporting goods sales tax on TPWD and THC, as it has done in recent budget cycles.

## Notes

The HRO analysis of HB 1214 and HJR 39 by Cyrier, the House companions for SB 26 and SJR 24, appeared in Part One of the April 17 *Daily Floor Report*.

**HB 1** by Zerwas, the general appropriations act, allocates from sporting goods sales tax revenue to the Texas Historical Commission \$10.2 million in fiscal 2020 and \$10.3 million in fiscal 2021. The Texas Parks and Wildlife Department is allocated \$126.2 million in fiscal 2020 and \$128.7 million in fiscal 2021.

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# Creating state flood plan, financing flood control projects

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**SB 8 by Perry, SB 7 by Creighton, HJR 4 by Phelan**

*SB 8 effective June 10, 2019, SB 7 generally effective June 13, 2019*

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The Legislature enacted several measures to create a state flood plan and finance flood control and mitigation projects.

**SB 8** creates a process to adopt a state flood plan based on regional water plans. It establishes a temporary advisory committee and requires certain reports on dam repair and maintenance.

**State flood plan.** SB 8 requires the Texas Water Development Board (TWDB) to adopt a comprehensive state flood plan that incorporates regional flood plans by September 1, 2024, and before the end of each five-year period after that date.

The state flood plan must provide for orderly preparation for and response to flood conditions to protect against the loss of life and property, be a guide to state and local flood control policy, and contribute to water development where possible. The plan must include:

- an evaluation of the condition and adequacy of flood control infrastructure on a regional basis;
- a statewide, ranked list of ongoing and proposed flood control and mitigation projects;
- an analysis of flood control projects included in previous state flood plans;
- an analysis of development in the 100-year floodplain areas; and
- legislative recommendations.

TWDB, in coordination with other state entities, must adopt guidance principles for the state flood plan that reflect the public interest of the entire state.

**Regional flood planning.** TWDB must designate flood planning regions corresponding to each river basin, provide technical and financial assistance to the groups, and adopt guidance principles for regional flood plans.

TWDB must designate representatives from each region to serve as the initial flood planning group, and this group may then designate additional representatives. The initial group must designate more representatives

if necessary to ensure adequate representation from the interests in its region, including the public, counties, cities, industries, agricultural or environmental interests, small businesses, electric utilities, river authorities, water districts, and water authorities. TWDB and each coordinating state agency also must appoint a representative to serve as an ex officio member of each group.

SB 8 requires each regional planning group to hold public meetings as provided by board rule to gather recommendations that should be considered in a regional flood plan.

The bill requires a regional flood plan to use information based on scientific data and updated mapping and provides a list of what other information must be included.

After preparing a regional flood plan, a planning group must hold at least one public meeting to accept comments on the plan. TWDB will determine if an adopted plan satisfies certain requirements. If the board determines that an element of a regional flood plan negatively affects a neighboring area, TWDB must coordinate with the affected area to adjust the plan.

Each flood planning group and committee or subcommittee of a group is subject to open meeting and public disclosure laws.

TWDB must adopt guidance principles for regional flood plans and designate flood planning regions by September 1, 2021. Each planning group must submit a regional flood plan by January 10, 2023.

**Advisory committee.** SB 8 establishes the State Flood Plan Implementation Advisory Committee, which includes six members from the Legislature and certain state agencies. At least semiannually, the advisory committee must review the state flood plan.

This provision expires and the advisory committee is dissolved on September 1, 2021.

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**Dam repair and maintenance plan, reports.** The State Soil and Water Conservation Board must adopt a plan describing the repair and maintenance needs of flood control dams every 10 years. Each year, the state board must deliver to TWDB a report on progress made on items listed in the plan.

TWDB, in coordination with the state board and the Texas Commission on Environmental Quality, must prepare a report on the repair and maintenance needs of certain dams.

**SB 7** creates the Flood Infrastructure Fund and the Texas Infrastructure Resiliency Fund.

**Flood Infrastructure Fund.** The bill creates the Flood Infrastructure Fund, a special fund in the state treasury outside the general revenue fund that may be used by TWDB without further appropriation.

*Use of infrastructure fund.* TWDB may use the fund to make certain low interest loans or grants to political subdivisions for flood projects and for certain other purposes, including to pay expenses of administering the fund and as a source of revenue or security for certain bonds. On the date TWDB adopts the initial state flood plan in accordance with SB 8, this section expires.

After adoption of the initial state flood plan, TWDB may use the infrastructure fund only to provide financing for flood projects included in the plan.

*Information clearinghouse.* TWDB must act as a clearinghouse for information about state and federal flood planning, mitigation, and control programs that may serve as a source of funding for projects.

*Advisory committee.* The State Water Implementation Fund for Texas Advisory Committee must review the overall operation, function, and structure of the infrastructure fund. The advisory committee may submit comments and recommendations to TWDB on the use of money in the fund.

**Texas Infrastructure Resiliency Fund.** The bill also creates the Texas Infrastructure Resiliency Fund, administered by TWDB, as a special fund in the state treasury outside the general revenue fund. It also creates the Texas Infrastructure Resiliency Fund Advisory Committee to review the overall operation, function, and structure of the resiliency fund.

*Floodplain Management Account.* The bill transfers the Floodplain Management Account to the resiliency fund as an account. TWDB may use the account to finance activities related to:

- the collection and analysis of flood-related information;
- flood planning, protection, mitigation, or adaptation;
- the provision of flood-related information to the public; or
- evaluating the response to and mitigation of flood incidents affecting residential property in floodplains.

*Hurricane Harvey Account.* The bill also creates the Hurricane Harvey Account as an account in the resiliency fund. The account may be used only to provide money to the Texas Division of Emergency Management in order to finance projects related to Hurricane Harvey.

*Federal Matching Account.* SB 7 creates the Federal Matching Account as an account in the resiliency fund that may be used by TWDB only to meet matching requirements for projects partially funded by federal money.

*Flood Plan Implementation Account.* The bill creates the Flood Plan Implementation Account as an account in the resiliency fund. TWDB may use the account only to provide financing for projects included in the state flood plan.

*Report and transparency requirements.* The bill requires a state agency that uses or disburses federal money for flood research, planning, or mitigation projects to submit a report quarterly to TWDB. Such reports must include the total federal money received and spent and the eligibility requirements for receiving that money.

TWDB must post certain information on its website on the use of the resiliency fund, including the progress of developing flood projects, a description of each project, and certain other information.

**HJR 4**, for which SB 7 is the enabling legislation, amends the Texas Constitution to create the Flood Infrastructure Fund as a special fund in the state treasury outside the general revenue fund. The fund may be used by TWDB without further appropriation.

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## Supporters said

SB 8 would create a collaborative state flood plan, based on regional plans, bringing all stakeholders together to plan for and mitigate future flood events.

According to the National Oceanic and Atmospheric Administration, Texas has experienced hundreds of flood events since 2000, resulting in many deaths and hundreds of millions of dollars in damages across the state. Recent floods throughout the state in 2015 and Hurricane Harvey in 2017 have further revealed the need for a concerted effort to plan for flooding events both on the coast and statewide.

SB 8 would establish a state flood plan to consolidate efforts to mitigate floods across political boundaries, allowing for better solutions and increased transparency, involving stakeholders and residents in the process. The bill would ensure that the regional flood plan of one area did not negatively affect a neighboring area by requiring the Texas Water Development Board to work with any region affected by a plan until the issue was resolved. An advisory committee made up of several state agencies and appropriate members of the Legislature would review the state flood plan's initial implementation.

SB 7, by creating the Flood Infrastructure Fund and the Texas Infrastructure Resiliency Fund, would support regional planning and coordination on flood mitigation projects and better provide for vital infrastructure by creating the Flood Infrastructure Fund and the Texas Infrastructure Resiliency Fund. A significant funding source is necessary to ensure cooperation among regions and all affected stakeholders and to create a more resilient Texas.

While federal funds are available for flood projects after disastrous events, counties and cities may not be able to put up the matching funds necessary to access that money. The infrastructure fund created by SB 7 would provide loans at or below market rates to help local governments meet matching fund needs and assist with basic flood project planning, grant applications, and the engineering of structural and nonstructural flood mitigation projects. After the initial state flood plan was adopted under SB 8, the fund would provide financing for flood projects under the plan.

The appropriations made by SB 500 to the resiliency fund and infrastructure fund would be one-time expenses for necessary flood infrastructure and would be made appropriately through the Economic Stabilization Fund.

Infrastructure needs in the state must be met to prepare for future flood events.

## Critics said

It is unnecessary to create another special fund in the Constitution through SB 7 and HJR 4, as sufficient sources of federal, state, and local funds are available to support flood mitigation projects.

Further, SB 7 and appropriations in the supplemental budget contingent on its passage would improperly use the Economic Stabilization Fund (ESF) to provide \$793 million to the Flood Infrastructure Fund and \$857 million to the Texas Infrastructure Resiliency Fund. The ESF should be used only for disaster response or relief or for other one-time expenses. Because the funds would be ongoing state programs, the money should come from general revenue during the normal budgeting process.

## Notes

The HRO analysis of SB 8 appeared in Part One of the May 16 Daily Floor Report. The analysis of SB 7 appeared in Part One of the May 16 *Daily Floor Report*, and the analysis of HJR 4 appeared in Part One of the April 10 *Daily Floor Report*.

**SB 500** by Nelson, the supplemental budget bill, appropriates \$857 million from the Economic Stabilization Fund (ESF) for the Texas Infrastructure Resiliency Fund in fiscal 2019, at least \$47 million of which must be deposited to the Floodplain Management Account. The bill also appropriates \$793 million from the ESF for the Flood Infrastructure Fund in fiscal 2019. The HRO analysis of SB 500 appeared in the March 27 *Daily Floor Report*.

Other Hurricane Harvey-specific provisions of SB 7 appear in the disaster relief section on Page 65.

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# River authority Sunset bills

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## **SB 606 by Watson, SB 625, SB 626, and SB 627 by Birdwell**

*Effective September 1, 2019*

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The 86th Legislature enacted four bills extending certain river authorities and adopting recommendations from the Sunset Advisory Commission, including standard across-the-board Sunset policies. The bills require the Lower Colorado River Authority, Nueces River Authority, Guadalupe-Blanco River Authority, and Red River Authority to undergo Sunset review again as if they were state agencies scheduled to be abolished September 1, 2031.

**SB 606** adopts certain Sunset Advisory Commission recommendations for the Lower Colorado River Authority (LCRA). The bill requires LCRA to develop and implement a public engagement policy for its water supply projects. This policy must describe how the authority will seek to actively engage stakeholders, including the possible use of advisory committees, community panels, town hall meetings, and other strategies.

**SB 625** adopts certain Sunset Advisory Commission recommendations for the Nueces River Authority (NRA). The bill requires NRA to adopt and regularly update a five-year strategic plan to establish its mission and anticipate activities. The plan must be published on the authority's website.

The bill adopts an across-the-board Sunset policy requiring the governor to designate the president of the board.

**SB 626** adopts certain Sunset Advisory Commission recommendations for the Guadalupe-Blanco River Authority (GBRA). The bill requires contracts that involve amounts greater than \$100,000, up from \$10,000, to receive a vote of approval from at least five board members. The bill repeals a provision prohibiting a board member, officer, agent, or employee from being directly or indirectly interested in a contract for the purchase of any property or construction of any work by or for the authority.

SB 626 also requires GBRA to adopt an asset management plan, to be approved annually by the board as part of the budgeting process. The plan must be publicly posted on GBRA's website.

**SB 627** adopts certain Sunset Advisory Commission recommendations for the Red River Authority (RRA). The bill requires the state auditor to conduct an audit of RRA no earlier than December 1, 2021, to evaluate whether the authority has addressed the challenges identified by the Sunset Advisory Commission, and to submit a report no later than December 1, 2022.

SB 627 also requires RRA's board of directors to establish a process to ensure that, before RRA makes a significant rate change, it provides affected persons with notice of the proposed change and an opportunity for public comment. The process must include notice of the proposed change both on RRA's website and in an affected person's utility bills.

RRA must adopt an asset management plan as specified in the bill. The plan must be approved annually by the board as part of the budgeting process and be publicly posted on RRA's website.

RRA's board of directors by resolution may increase board members' per diem and traveling expenses.

## **Supporters said**

SB 606 would improve the Lower Colorado River Authority's (LCRA) engagement with public stakeholders, which would create clear standards for the transparency of future water projects and strengthen the trust of the authority's customers. Developing groundwater resources is a natural extension and fulfillment of the authority's role as a water utility, and the recent agreement LCRA reached with concerned stakeholders on the development of groundwater in the Lost Pines Groundwater Conservation District is an example of how stakeholder interests can be successfully balanced with those of the authority.

SB 625 would increase the transparency and public accountability of the Nueces River Authority. It would benefit the authority and its customers by ensuring that the authority had a strategic plan in place to serve the long-term needs of its mission in the river basin. The

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bill also would adopt a Sunset recommendation that the governor appoint the presiding officer of the board, ensuring that the river authority's policy goals were integrated with those of the rest of the state.

SB 626 would apply Sunset recommendations to increase transparency and public accountability of the Guadalupe-Blanco River Authority (GBRA). The provision calling for the development of an asset management plan would help GBRA to better strategize to address the region's long-term issues of growing population and aging infrastructure.

SB 627 would apply good government practices to the Red River Authority (RRA) to ensure it met minimum safety and transparency standards. By requiring the authority to adopt a comprehensive asset management plan, the bill would address findings that the authority did not meet certain water quality standards for decades and did not adequately evaluate all potential solutions to address the problem. This plan would help RRA make more informed decisions about its infrastructure and how to best pay for necessary future improvements for safe drinking water. RRA also would have to adopt a policy to ensure meaningful public input on significant rate changes, increasing transparency for its customers.

### Critics said

SB 606 would not go far enough in clarifying the competing interests of LCRA among developing groundwater resources, conserving the environment, and respecting the rights of local stakeholders. The clearest way to avoid these conflicts would be for the authority to get out of the groundwater development business.

SB 625 could deprive the NRA of locally oriented leadership by requiring that the president of the board be appointed by the governor rather than by peers in the river authority. The current practice avoids this unnecessary political appointment by trusting members from local communities to select an appropriate president based on earned respect and leadership ability.

SB 626 would not address the issue that GBRA is no longer as relevant to the growing water needs of the region. The bill should be amended to direct the Texas Commission on Environmental Quality to determine whether the GBRA's region would be better served by dividing and reconfiguring the authority to better represent the river basin's diverse constituencies.

SB 627 would stretch the already strained resources of the RRA by mandating increased costs in nonessential areas. The size and complexity of the authority's jurisdiction makes a formal asset management plan cost-prohibitive. Implementing any additional notice requirements would necessitate increases in billing software and postage costs, which would be passed on to the authority's customers.

### Notes

The HRO analyses of SB 606, SB 625, SB 626, and SB 627 appeared in Part One of the April 25 *Daily Floor Report*.

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# Public Education

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*Finally approved		

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# Modifying public school financing

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## HB 3 by Huberty

*Generally effective September 1, 2019*

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**HB 3** revises the school finance formulas that determine how much revenue a district or charter school is entitled to receive from the state, including increasing the basic allotment per student. It requires districts to allocate a portion of their increased funding to teacher compensation and to provide full-day, rather than half-day, prekindergarten for eligible 4-year-olds.

HB 3 lowers the maximum compressed tax rate that school districts may levy on local property and creates a mechanism by which these tax rates are compressed when property values increase by 2.5 percent or more.

**Tax reduction.** HB 3 provides state aid to school districts to reduce local property taxes. Districts will calculate their reduced Tier 1 maintenance and operations (M&O) tax rates according to a “state compression percentage” based on \$1.00 per \$100 property valuation, compressed to 93 percent for the 2019 tax year, or lower by appropriation. The bill creates a mechanism by which, beginning September 1, 2020, districts’ tax rates are reduced if annual property value growth is 2.5 percent or higher.

The Texas Education Agency (TEA) must calculate and make available each districts’ maximum compressed rate (MCR), defined as the tax rate at which a district must levy an M&O tax to receive its full Tier 1 state funding. If a district has an MCR that is less than 90 percent of another district’s MCR, TEA must calculate the rate of the district with a lower MCR until the difference between that district’s and another district’s MCR is not more than 10 percent.

A district’s Tier 2, or enrichment, M&O tax rate may consist of up to 17-cents in additional tax effort. The first eight cents are known as “golden pennies” and are not subject to property wealth recapture laws. The last nine cents are known as “copper pennies” and are subject to recapture. All but the first five golden pennies require voter approval. For the 2020 tax year, a district must reduce its golden pennies from five to four unless the board of trustees unanimously approves maintaining all five golden pennies. Under the previous law, districts could increase their Tier 2 tax rate by six golden pennies and 11 copper

pennies, with all but the first four golden pennies requiring voter approval.

HB 3 changes the amount that golden pennies and copper pennies are guaranteed by the state to generate in combined state and local revenue regardless of a district’s taxable property wealth. If a district’s tax base does not allow it to generate the guaranteed amount, the state makes up the difference.

The previous law linked golden penny revenue to the amount of local revenue that such a penny would generate in Austin ISD. Under HB 3, each golden penny will generate either the amount available to a school district at 160 percent of the basic allotment or at the statewide 96th percentile of property wealth per weighted student, whichever is greater. For tax year 2019, each golden penny will generate \$98.56.

Under the previous law, each of a district’s copper pennies were guaranteed by the state to generate \$31.95 per weighted student. For tax year 2019, each copper penny will generate the amount that results from multiplying the basic allotment of \$6,160 by 0.008, or \$49.28. The bill includes tax compression of copper pennies by requiring a district to reduce its tax rate when its guaranteed level of state and local funds for its copper pennies results in greater revenue per weighted student per cent of tax effort than the preceding school year. For tax year 2019, copper pennies are compressed by 0.6483.

*Tax compression study.* The Legislative Budget Board, in conjunction with other state agencies, must study possible methods of providing property tax relief through the reduction of school district M&O taxes. The study is due to the governor and legislative leaders by September 1, 2020.

**Voter-approval rate.** HB 3 amends Tax Code provisions under which school districts currently must hold an election to approve a tax rate that exceeds the district’s voter-approval (rollback) tax rate. The bill establishes methods of calculating the voter-approval tax rate for the 2019 tax year and subsequent tax years. A voter-approval tax rate election must be held on a uniform



election date and the ballot language must include the percentage increase in M&O tax revenue under the proposed tax rate from that generated in the preceding tax year.

*Efficiency audit.* School boards must conduct efficiency audits of the districts' fiscal management before seeking voter approval of an M&O tax rate. Districts must pay for the audits and post the results on their websites before the election. Districts located in a declared disaster area may hold an election to adopt an M&O tax rate without conducting an efficiency audit during a two-year period following the disaster declaration.

**Property wealth equalization.** The bill replaces Education Code references to "equalized wealth level" for purposes of local tax revenue recapture with references to "local revenue level in excess of entitlement." Districts must reduce their Tier 1 local share revenue if it exceeds their Tier 1 entitlement amount minus the district's distribution from the Available School Fund. The bill would retain existing options for such a district to purchase attendance credits or use another specified method to reduce its revenue.

*Equalized wealth transition.* The bill phases out funding provisions that allowed certain property-wealthy districts to receive an annual "hold harmless" allotment based on their M&O revenue for the 1992-1993 school year. It establishes a series of progressive reductions in the hold harmless funding from 20 percent to 80 percent, applicable to the four school years from 2020-2021 to 2023-2024.

**Foundation School Program funding.** HB 3 changes the order in which funds are applied to finance a district's Foundation School Program (FSP) by requiring funds from the Available School Fund to be applied before locally generated property tax revenue and state funds.

The bill also requires calculation of the local share of a district's FSP funding to be based on current year, rather than prior year, property values.

*Tax Reduction and Excellence in Education Fund.* HB 3 establishes the Tax Reduction and Excellence in Education Fund as a special fund in the state treasury outside the general revenue fund. Revenue sources for the fund include net sales tax revenue collected by online marketplace providers and amounts distributed to the Available School Fund in excess of \$300 million each year. Money from the fund may be appropriated only to pay

the cost of Tier 1 allotments under the FSP or to reduce district M&O tax rates.

*Commissioner's authority.* The commissioner of education is authorized until the 2021-2022 school year to adjust a district's funding entitlement to address an unanticipated loss or gain in funding. Before making an adjustment, the commissioner must notify and receive approval from the Legislative Budget Board and the Office of the Governor. The commissioner also must provide the Legislature with an explanation for an adjustment.

*Formula transition grants.* HB 3 establishes formula transition grants and entitles districts and charter schools to receive at least 3 percent more funding than they would have under prior law. The grants will not be available after the 2023-2024 school year.

**Basic allotment.** The bill sets the statutory basic allotment awarded to districts at \$6,160. Under previous law the basic allotment was \$4,765, but in recent legislative sessions it was set at \$5,140 in the general appropriations act.

**Teacher compensation.** During any school year for which the maximum amount of the basic allotment is greater than the maximum amount for the preceding school year, a district must use at least 30 percent of the budget increase to increase compensation to district employees as follows:

- 75 percent must be used to increase the compensation paid to classroom teachers and full-time librarians, counselors, and school nurses, prioritizing differentiated compensation for classroom teachers with more than five years of experiences; and
- 25 percent may be used to increase compensation paid to full-time district employees other than administrators.

*Teacher incentive funding.* HB 3 establishes an optional local teacher designation system and entitles teachers designated under the system as master, exemplary, or recognized teachers to a salary allotment. Designated teachers are entitled to a base allotment ranging from \$3,000 to \$32,000 each year, with the higher funding amounts available for teachers at rural campuses and high-poverty campuses.

*Mentor program allotment.* Districts that implement a program under Education Code provisions to mentor

teachers who have less than two years of teaching experience will receive an allotment under a formula determined by the commissioner. Funds provided by this allotment must be used to support mentoring programs and provide stipends for teachers who serve as mentors.

*TRS contributions.* The bill requires charter schools and districts of innovation to pay the state's contribution to the Teacher Retirement System on payroll amounts for members that exceed the statutory minimum salary schedule applicable to school districts.

**Funding factors repealed.** HB 3 repeals a number of factors used to determine a district's formula funding.

*Cost of education adjustment.* The bill repeals the cost of education adjustment that had been used to adjust the basic allotment to reflect the geographic variation in known resource costs, such as educator salaries, due to factors beyond school districts' control. TEA must enter into a memorandum of understanding with a public institution of higher education to study geographic variations in costs of education and transportation costs and report to the Legislature by December 1, 2020.

*High school allotment.* The bill repeals a district's entitlement to an annual high school allotment of \$275 for each student in average daily attendance in grades 9 through 12.

*Gifted and talented programs.* The bill repeals a district's entitlement to an annual allotment equal to the district's adjusted basic allotment multiplied by 0.12 for students served in a program for gifted and talented students. Districts must annually certify that they provide a gifted and talented program and could lose funding for failing to comply.

**Funding factor changes.** HB 3 changes a number of factors used to determine a district's formula funding.

*Compensatory education allotment.* The bill replaces the compensatory education allotment weight of 0.2 for educationally disadvantaged students with a weight that ranges from 0.225 to 0.275 per student based on the severity of economic disadvantage in a student's neighborhood.

Funding is calculated by multiplying the basic allotment by the weight assigned to a student's census block. The commissioner must establish an index that categorizes blocks in five tiers based severity of economic disadvantage.

If available data on a census block is insufficient, a district will receive a 0.225 weight for students residing in that block. Districts must report to the commissioner the census block in which each student who is educationally disadvantaged resides. The commissioner must review and, if necessary, update the census block index by March 1 of each year.

Districts must use at least 55 percent of these allotment funds for programs and services designed to eliminate disparities in academic performance between students who are educationally disadvantaged and those who are not. Funds may be used to provide child-care services or assistance with child-care expenses for students at risk of dropping out of school or to pay the costs associated with services provided through a life skills program.

*Bilingual education allotment.* The bilingual education allotment is increased for students in certain bilingual education programs. Funding is calculated by multiplying the basic allotment by 0.15 for a student of limited English proficiency in a dual language program. The basic allotment is multiplied by 0.05 for English-speaking students in a dual language program. The allotment for students of limited English proficiency in other types of bilingual education programs would remain at 0.1. The bill requires districts to use 55 percent of allotted funds to provide bilingual or special language programs.

*Transportation allotment.* HB 3 changes the transportation allotment to be based on a per-mile allotment set by the Legislature in the general appropriations act rather than the previous law's linear density calculation. Districts will be reimbursed for transporting dual credit students to another campus or a postsecondary educational institution and for transporting career and technology education students to workplaces for work-based learning.

*Special education allotment.* The bill increases the factor by which the basic allotment is multiplied for special education students in a mainstream classroom from 1.1 to 1.15. It also requires the commissioner to establish an advisory committee to make recommendations for methods of financing special education, with a report due to the Legislature by May 1, 2020.

If the commissioner determines that the total amount of special education funding for any school year is less than the amount required under the federal law that prevents states from reducing financial support for special education from year to year, the commissioner must increase the

total amount of funding for that school year to comply with federal requirements. The commissioner could reduce other FSP funding to achieve the necessary amount.

*Small and mid-sized districts.* The small and mid-sized district adjustment to the basic allotment is replaced with a small and mid-sized district allotment that is in addition to the basic allotment. It adds a new small district formula for districts with fewer than 300 students that are the only district in a county.

*Career and technology education allotment.* The allotment for career and technology programs for high school students is expanded to include students in grades 7 and 8. At least 55 percent of these allotted funds must be used on career and technology programs.

*New instructional facilities allotment.* The cap on the amount per school year that may be appropriated for the new instructional facilities allotment is raised from \$25 million to \$100 million. Under the bill, "new instructional facilities" include facilities that are newly constructed, repurposed, or leased for the first time as an instructional facility with a minimum lease term of 10 years.

**New funding factors.** HB 3 creates a number of new factors to be used in determining a district's formula funding.

*Early education allotment.* HB 3 establishes an early education allotment for certain students in kindergarten through grade 3. The basic allotment is multiplied by 0.1 if such a student is educationally disadvantaged or is of limited English proficiency and in a bilingual education or special language program. Districts must use funds from this allotment to improve student performance in reading and mathematics in prekindergarten through grade 3. A district may receive funding for a student under the early education allotment, the compensatory education allotment, and the bilingual allotment if the student satisfies all allotment requirements.

*Allotment for students with dyslexia.* The basic allotment is increased by a multiplier of 0.1 for students with dyslexia or a related disorder. This funding is available for students who are receiving services for dyslexia or a related disorder in accordance with certain special education programs or who are permitted to use modifications in the classroom or on state assessments.

Districts may receive funding for a student who meets the criteria for dyslexia instruction and also is receiving funding for special education services if the student

satisfies the requirements of both programs. Districts may use up to 20 percent of their dyslexia funding to contract with private entities to provide supplemental academic services as recommended by a student's special education plan.

*Fast growth allotment.* A district in which the growth in student enrollment over the preceding three school years is in the top quartile of growth statewide as determined by the commissioner is entitled to an allotment equal to the basic allotment multiplied by 0.04 for each student in average daily attendance.

**Other provisions.** HB 3 establishes new requirements for prekindergarten programs and a college, career, or military readiness outcomes bonus.

*Prekindergarten.* Districts must provide full-day prekindergarten classes for eligible students who are at least 4 years old. Districts also may provide half-day prekindergarten classes for eligible children under age 4. Programs must comply with Education Code standards for high-quality prekindergarten.

The commissioner must exempt a district from all or part of the requirements if the district would be required to construct classroom facilities or if implementing the requirements would result in fewer eligible children being enrolled in a prekindergarten class. A district may not receive an exemption unless it has considered at a public meeting proposals for partnerships with public or private entities regarding the required classes. An exemption may not be granted for a period longer than three school years and may be renewed only once.

*College, Career, or Military Readiness.* HB 3 establishes a college, career, or military readiness (CCMR) outcomes bonus with funding paid to school districts for each annual graduate above certain threshold percentages established by the education commissioner who meets certain CCMR standards established by the bill. The bonuses are \$5,000 for each CCMR-ready graduate above the minimum threshold who is educationally disadvantaged and \$3,000 for each CCMR-ready graduate above the minimum threshold who is not educationally disadvantaged. In addition to those bonuses, districts also will receive \$2,000 for each CCMR-ready graduate enrolled in a special education program. At least 55 percent of the bonus funds must be used in grades 8 through 12 to improve CCMR.

*Student aid application.* As a requirement for high school graduation, each student must complete and submit a free application for federal student aid or a Texas

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application for state financial aid. Students are exempted under certain circumstances, including if the student's parent submits a signed form authorizing the student to decline.

*Funding for additional instructional days.* The bill increases funding for districts or charter schools that offer an additional 30 days of half-day instruction for students enrolled in prekindergarten through grade 5. A student may not be required to attend school for any additional instructional days.

## Supporters said

HB 3 would transform the Texas school finance system by investing \$11.5 billion into public education, increasing the state's share of funding and buying down local property taxes. The bill also would provide ongoing property tax relief by requiring that tax rates be automatically reduced when property values increase by a certain percentage.

The bill implements many of the recommendations of the Texas Commission on Public School Finance, which spent a year studying education funding and focused on research-based methods of boosting student achievement. HB 3 would increase the basic allotment for all districts and target much-needed resources to increase teacher pay and advance student achievement. It also would provide additional funding for students in certain bilingual classes and those with learning disorders such as dyslexia. In addition, HB 3 would streamline the funding formulas and repeal outdated elements such as the cost-of-education index, which has not been updated in 30 years.

**Tax reduction.** HB 3 would move school districts to a more unified and lower tax rate by requiring most districts to initially tax at a similar Tier 1 rate of 93 cents per \$100 of property valuation. Changes to the Tier 2, or enrichment, taxes would allow districts to further lower their tax rates while not suffering a loss in revenue. Although some have criticized the provision delinking the guaranteed yield for "golden penny" tax revenue from the amount of revenue raised by property-wealthy Austin ISD, the bill would provide a "safety net" guarantee that any district's combined state and local revenue could not be less than what would be generated by a district at the 96th percentile of property wealth per student. The bill would provide additional tax compression on "copper penny" tax revenue while increasing the guaranteed yield for these taxes.

The bill would offer continued tax relief by requiring tax rates be automatically reduced if property values increase by 2.5 percent or more. The requirement for school boards to conduct an efficiency audit would ensure they were using their existing funds wisely before asking taxpayers to pay more.

**Basic allotment.** HB 3 would increase the basic allotment, which benefits all schools, for the first time since fiscal 2016. Raising the basic allotment is an equitable method of increasing state revenue for districts and would reduce the amount of local revenue that property-wealthy districts are required to share with less wealthy districts.

**Teacher pay.** The bill recognizes the critical role that teachers play in student success by requiring districts to use a portion of their new revenue to increase teacher pay. An optional local incentive funding program would allow districts to reward the most effective educators who teach in the highest need schools.

**Full-day prekindergarten.** HB 3 would take a long-needed step to improve early childhood education by requiring districts to provide full-day, high-quality prekindergarten for students who were economically disadvantaged or English learners. The new early education allotment would provide sufficient funding for full-day pre-K and to ensure students are reading on grade level by grade 3. Districts that lack classroom space could seek a waiver for up to three years and use that time to build capacity. In addition, the bill promotes district partnerships with private day care providers by requiring them to consider such partnerships in a public meeting before seeking a waiver.

**Compensatory education.** HB 3 would increase the compensatory education weight for all eligible children while targeting additional funding to students living in neighborhoods of concentrated poverty by using census block data to measure the severity of economic disadvantage. The current method based on enrollment in the federal free and reduced lunch program fails to account for differences in neighborhoods that are lower wealth but stable and those where generational poverty is more likely to impair a student's ability to learn.

**Bilingual education programs.** The bill would help districts provide dual-language programs, considered the most effective type of bilingual education programs, by increasing the funding weight for students in those programs. Districts would gain flexibility to spend revenue

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from the compensatory education and bilingual education allotments on programs that work best for their students.

**Gifted and talented programs.** The removal of dedicated funding for students served in gifted and talented programs would simplify the school finance system while safeguarding those programs. Districts would be required to certify annually that they have such programs and could lose money if they failed to comply.

**Cost of education adjustment.** HB 3 would simplify school funding laws by eliminating outdated adjustments such as the cost of education index. The index was initially designed to help districts adjust for varying economic conditions across the state. It has not been updated since 1990, so it does little to help districts that have changed dramatically in the past 30 years. Eliminating the index would free up funding to increase the basic allotment for all districts.

## Critics said

HB 3 would increase school funding while providing only limited tax relief at a time when rising school property taxes are making homeownership less affordable and limiting the ability of Texans on fixed incomes to remain in their homes. The bill is based on an unproven theory that more school spending would lead to better results. The increased state spending and requirement that districts continue to lower their tax rates to accommodate for rising property values might be unsustainable in future years, particularly during an economic downturn, without a dedicated revenue stream to underwrite the school finance plan.

**Tax reduction.** Requiring districts to automatically reduce tax rates when property values rise by 2.5 percent or more could make it harder for the state to make future investments in the classroom as more state dollars will be needed just to ensure funding stays level as tax rates decline.

Increasing the number of “golden pennies” that districts could raise would increase the inequity of enrichment funding by allowing districts with higher property wealth to retain more local revenue. Districts would lose an automatic funding driver by the provision delinking the guaranteed yield for “golden pennies” from Austin ISD’s tax revenue level. As the Austin school district has experienced growing property wealth in recent years, districts across the state have benefited from increased state revenue to boost the return on their golden pennies.

**Full-day prekindergarten.** Requiring school districts to provide full-day prekindergarten for eligible 4-year-olds would hurt private day care providers that receive federal subsidies to serve eligible families. These families must pay a small monthly fee for day care and likely would switch to free pre-K at their local schools. Day care centers often rely on the revenue from programs for 4-year-old children to cover their expenses for the higher costs of caring for infants and toddlers.

**Gifted and talented programs.** HB 3 would hurt school programs that serve gifted and talented students by ending the funding allotment for those students. Although districts would be required to certify that they were serving gifted students, the lack of dedicated funding could result in less effective programs for these students.

**Compensatory education.** The use of census tract data in determining a spectrum of poverty to assign various weights for the compensatory education allotment could result in inaccurate counts of low-income students. The data also might not be useful in districts where children often transfer from neighborhood schools for specific programs at other schools. A better path would be to increase the compensatory education allotment by the same amount for all eligible students.

**Bilingual education programs.** The bill should raise the funding weight for students in all types of bilingual education programs instead of just for students in dual-language programs. While dual-language programs are beneficial, they serve fewer students than other programs, such as English as a Second Language and transitional bilingual education.

## Notes

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

**HB 1** by Zerwas, the general appropriations act, allocates \$11.5 billion in general revenue above prior law funding for public schools. This includes \$6.5 billion for increased school funding and \$5 billion to compress school district tax rates.

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# Changing school mental health training and curriculum requirements

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## HB 18 by Price

*Effective December 1, 2019*

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**HB 18** amends mental health and substance use training, curriculum, and continuing education requirements for certain schools.

**Continuing education requirements.** The bill changes continuing education requirements for classroom teachers, principals, and counselors by mandating that instruction on mental health conditions be among the continuing education requirements. It also specifies that students with mental health conditions or who engage in substance abuse are among the diverse students populations about whom continuing education instruction is required.

“Mental health condition” means a persistent or recurrent pattern of thoughts, feelings, or behaviors that constitutes a mental illness, disease, or disorder, other than or in addition to epilepsy, substance abuse, or an intellectual disability, or that impairs a person’s social, emotional, or educational functioning and increases the risk of developing certain conditions. “Substance abuse” is patterned use of a substance, including a controlled substance and alcohol, in which the person consumes the substance in amounts or with methods that are harmful to the person or to others.

**Training.** Staff development training for educators must include suicide prevention, recognizing signs of mental health conditions and substance abuse, strategies for establishing and maintaining positive relationships among students, and preventing and reporting incidents of bullying. The training must use a best practice-based program recommended by the Health and Human Services Commission (HHSC). It must address how mental health conditions, including grief and trauma, affect student learning and behavior and how certain strategies support the academic success of affected students.

**Counseling program.** HB 18 requires a school counselor to work in collaboration with certain individuals to plan, implement, and evaluate a comprehensive school counseling program that conforms to the most recent edition of the Texas Model for Comprehensive School

Counseling Programs developed by the Texas Counseling Association.

**Curriculum.** The health curriculum for K-12 students must include instruction on mental health, substance abuse, emotional management skills, maintaining positive relationships, and responsible decision-making.

**Texas Education Agency duties.** The Texas Education Agency (TEA), in coordination with HHSC, must develop guidelines for school districts on partnering with certain entities to increase student access to mental health services and obtaining mental health services through Medicaid.

**Transferring responsibilities.** The bill transfers the responsibility of providing an annual list of recommended programs and practices for early mental health, substance abuse, suicide prevention and intervention, and grief- and trauma-informed practices, among other areas, from the Department of State Health Services to TEA in coordination with HHSC. School districts must develop practices and procedures for these areas.

**Authorizations.** Open-enrollment charter schools may establish school-based health centers, which may include treatment for mental health conditions and substance abuse as available services.

School districts may employ or contract with one or more nonphysician mental health professionals. “Nonphysician mental health professional” means a licensed psychologist, professional counselor, clinical social worker, or marriage and family therapist or a registered nurse with an advanced degree in psychiatric nursing.

## Supporters said

HB 18 would increase awareness and reduce the stigma of mental health issues among public school students and educators, and would provide more resources for educators to address mental health and substance abuse. Enhancing teachers’ training on mental health would help them better identify students’ trauma and

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address behavioral and mental health issues. The bill is necessary to give teachers the resources they need to prevent behavioral and mental health issues from interfering with a student's academic performance.

Reducing stigma surrounding mental health concerns encourages students to identify issues and seek help. HB 18 would improve the identification of and early intervention for students' mental health and substance use issues, including by allowing schools to employ or contract with nonphysician mental health professionals. By improving students' access to needed mental health and substance abuse care, the bill would improve a student's chances of graduating from high school and seeking employment. It could decrease their dependence on state programs later in life.

By changing the definition of "mental health condition," the bill would better address the wide range of complex mental health conditions students may experience. Studies show that about half of all mental health disorders manifest before a person turns 14. Amending the definition would keep the right to clinically diagnose a student in the hands of licensed mental health professionals, not school officials.

## Critics said

HB 18 would expand mental health training for school personnel, but parents and the community could be better equipped than schools to address children's mental health and substance use issues. Schools increasingly are focusing on students' behavioral health rather than their academic performance, which could have undesirable consequences.

The bill also could lead to a conflict of interest by allowing school districts to hire nonphysician mental health professionals. These professionals could work at a for-profit entity or standalone clinic, which might incentivize the professionals to recommend certain treatment for students.

Changing the definition of "mental health condition" could result in teachers concluding that a student was having an emotional or mental health crisis, even if that was not the case, and unintentionally mislabeling the student.

## Notes

The HRO analysis of HB 18 appeared in Part One of the April 15 *Daily Floor Report*.

**HB 19** by Price, effective September 1, 2019, requires local mental health authorities (LMHAs) to employ a nonphysician mental health professional to serve as a mental health and substance use resource for school districts located in regions served by a regional education service center and in which the LMHA provides services. The HRO analysis of HB 19 appeared in Part One of the April 15 *Daily Floor Report*.

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# Shortening assessment times for students

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## HB 3906 by Huberty

*Generally effective June 14, 2019*

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**HB 3906** allows State of Texas Assessments of Academic Readiness (STAAR) exams to be administered in multiple parts over more than one day. The bill eliminates standalone writing tests in grades 4 and 7 beginning September 1, 2021. It requires the Texas Education Agency (TEA) to develop recommendations and a transition plan for electronic administration of STAAR exams by the 2022-2023 school year.

**Assessments.** HB 3906 adjusts the structure of STAAR exams in grades 3 through 8 by allowing them to be administered in up to three separate parts over more than one day. A single part of an exam must be designed to allow 85 percent of students in grades 3 and 4 to finish within 60 minutes and 85 percent of students in grades 5 through 8 to finish within 75 minutes. The bill's time restrictions do not apply if they result in an exam no longer complying with federal law or becoming invalid and unreliable as determined by the advisory committees established by the bill.

High school end-of-course exams also may be administered in multiple parts over more than one day. On September 1, 2021, TEA will no longer be required to develop STAAR exams to assess essential knowledge and skills in writing for grades 4 and 7.

The bill requires the commissioner of education to appoint technical and educator advisory committees to advise the commissioner regarding the development of valid and reliable state assessments.

STAAR exams may not be administered on the first instructional day of a week, except for certain classroom portfolio methods to assess writing performance. Beginning with the 2022-2023 school year, assessments may not present more than 75 percent of the questions in a multiple choice format.

HB 3906 removes statutory requirements related to the use of technology on certain math exams and instead allows the State Board of Education to designate sections that may be completed with the aid of technology and those that must be completed without the aid of technology.

For each subject or course for each grade level subject to testing requirements, TEA must adopt optional interim assessment instruments. An optional interim assessment must be predictive of the applicable STAAR exam, be administered electronically, and may not be used for school accountability purposes.

**Transition to electronic administration.** HB 3906 requires TEA to develop a transition plan to administer all assessment instruments electronically by the 2022-23 school year. The plan must evaluate the availability of internet access in each school district and identify changes to state law or policy necessary to improve access.

By December 1, 2020, TEA must submit to the governor, the lieutenant governor, and the members of the Legislature a report on what school districts need to transition to electronic administration, any changes to state law to assist in transition, and a timeline for statewide implementation. The plan must be implemented by September 1, 2021.

**Pilot program.** TEA is required to establish a pilot program in which participating school districts administer certain assessments to monitor student learning throughout the school year for STAAR subjects or grade levels. School districts may elect to participate in the program, and participation does not affect the district's obligations regarding STAAR exams.

By December 1 of each even-numbered year, TEA must submit to the governor, the lieutenant governor, and the Legislature a report on the pilot program that includes an analysis of whether the program provided any improvement in instructional support, as well as a determination of the feasibility of replacing annual STAAR assessments with integrated formative assessments.

The bill generally applies beginning with the 2019-2020 school year, unless otherwise noted.

## Supporters said

HB 3906 would reduce the disruption public school students experience during STAAR testing. Breaking up



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tests into multiple parts and administering them over several days would help lower the stress placed on a long single day of testing. With less pressure, students would be able to perform at a higher level.

By requiring TEA to establish a transition plan to begin electronic administration of the STAAR in September 2021, the bill would allow exam results to be reported more quickly to students, parents, and schools.

HB 3906 also would eliminate the standalone writing assessment for grades 4 and 7, a test that has been difficult to score. This would reduce high-stakes testing and the time necessary for test preparation, thereby allowing for more classroom instruction.

## Critics said

HB 3906 would allow schools to increase the total number of testing days, potentially spreading testing anxiety over a period of several days rather than ending it in one.

## Notes

The HRO analysis of HB 3906 appeared in Part One of the May 7 *Daily Floor Report*.

The 86th Legislature enacted other bills related to statewide assessments.

**HB 1244** by Ashby, effective June 14, 2019, requires the U.S. history end-of-course exam to include 10 questions randomly selected by the Texas Education Agency from the civics test administered by the U.S. Citizenship and Immigration Services as part of the naturalization process. The requirement applies beginning with students who enter the ninth grade during the 2019-2020 school year. The HRO analysis of HB 1244 appeared in the March 19 *Daily Floor Report*.

**HB 1891** by Stucky, effective September 1, 2019, allows those who reach a required score on high school equivalency exams to be exempt from taking the Texas Success Initiative Assessment used by state community colleges. The HRO analysis of HB 1891 appeared in Part Three of the April 15 *Daily Floor Report*.

**SB 213** by Seliger, generally effective May 7, 2019, extends the use of individual graduation committees until September 1, 2023. The committees are used by schools

to determine if a high school student who has failed to pass one or two of the five STAAR end-of-course exams is qualified to graduate. The HRO analysis of HB 851, the House companion to SB 213, appeared in Part Three of the April 15 *Daily Floor Report*.

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# Improving school safety, promoting mental health

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## SB 11 by Taylor

*Generally effective June 6, 2019*

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**SB 11** revises requirements for school multihazard emergency operations plans and requires school districts to establish threat assessment teams for school safety and school climate. The bill requires districts to integrate trauma-informed practices in schools and establishes a school safety allotment for districts to use for mental health personnel and to improve security in school facilities.

**Emergency planning.** SB 11 adds requirements for the statutory multihazard emergency operations plan adopted by districts and public junior college districts. It also adds open-enrollment charter schools as entities required to adopt and implement such plans.

Under the bill, multihazard emergency operations plans must provide for training in responding to an emergency for school employees, including substitute teachers; measures to ensure communication with certain emergency services during an emergency; and mandatory school drills and exercises designed to prepare students and employees for responding to an emergency.

School districts' plans also must include provisions for notifying parents of a significant threat to the health or safety of students and other provisions to ensure the safety of students and employees.

*Plan review.* The Texas School Safety Center (TSSC) must establish a random or need-based cycle for reviewing and verifying multihazard emergency operations plans. TSSC also may require a district to submit its plan for immediate review if the district's statutory safety and security audit indicates noncompliance with applicable standards. A school board must hold a public hearing if it receives a notice of noncompliance regarding its multihazard plan or school safety audit.

*School safety and security committee.* SB 11 adds members to district school and safety security committees, including local law enforcement and emergency management representatives, a classroom teacher, and two parents of students enrolled in the district. Periodically, committees must recommend plan updates to district trustees and administrators in accordance with identified best practices.

**Notification of bomb or terroristic threat.** School districts that receive a bomb threat or terroristic threat for a campus at which students are present must provide notification of the threat as soon as possible to the parent or guardian of each student who is assigned to the campus or who regularly uses the facility.

**Evacuations and school drills.** The education commissioner, in consultation with TSSC and the state fire marshal, must adopt rules that provide procedures for evacuating and securing school property during an emergency. The commissioner and the consulting entities also must designate the number of mandatory school drills to be conducted each school semester, not to exceed eight drills counting fire, lockdown, lockout, shelter-in-place, and evacuation drills.

**Threat assessment.** The commissioner, in coordination with TSSC, must adopt rules to establish a safe and supportive school program, incorporating research-based best practices for school safety.

Districts and charter schools must establish a threat assessment and safe and supportive school team to serve each campus and adopt policies and procedures for the teams. Team members, who must have certain expertise, must conduct a threat assessment that includes assessing and reporting individuals who threaten violence or exhibit threatening or violent behavior and determining the appropriate intervention. The bill contains requirements for the team to report its activities to the Texas Education Agency (TEA).

If a team identifies students or other individuals who poses a serious risk of violence to themselves or others, the team must immediately report it to the superintendent. If the individual is a student, the superintendent must notify the student's parent or guardian but may act immediately to prevent an imminent threat or respond to an emergency.

A threat assessment team may not provide a mental health care service to a student younger than 18 unless the team obtains written consent from a parent.

**Model policies.** The TSSC, in coordination with TEA, must develop model policies and procedures to help school districts establish and train threat assessment teams. The model policies must include procedures for referring a student to a local mental health authority or health care provider for evaluation or treatment and for referring a student for a full individual and initial evaluation for special education services. The policies also must include procedures for students and school personnel to anonymously report dangerous, violent, or unlawful activity that occurs or is threatened to occur on school property or that relates to a student or school personnel.

**Trauma-informed care policy.** School districts must implement a policy requiring the integration of trauma-informed practices in each school and in the district's improvement plan. A trauma-informed care policy must address methods for increasing staff and parent awareness of trauma-informed care and for implementation by district and campus staff. It also must address available counseling options for students affected by trauma and grief.

**Mental health resources.** SB 11 requires TEA, in conjunction with certain state agencies, to develop a rubric for use by regional education service centers in identifying specified, regionally available mental health resources. TEA also must develop a statewide plan for student mental health and a list of available resources.

**School facility standards.** SB 11 requires the education commissioner to adopt or amend rules to ensure that building standards for instructional facilities and other school district and open-enrollment charter school facilities provide a secure and safe environment. The rules must include best practices for design and construction of new facilities and the improvement, renovation, and retrofitting of existing facilities. The rules must be reviewed and amended as needed by September 1 of each even-numbered year.

**School curriculum.** The bill requires the school health curriculum to cover mental health, substance abuse, relationship building skills, and suicide prevention. The State Board of Education by rule must require each school district to incorporate instruction in digital citizenship, including information on the potential criminal consequences of cyberbullying.

**Parental awareness.** Local school health advisory councils must recommend strategies to increase parental awareness about risky behaviors and early warning signs

of suicide risks and behavioral health concerns as well as available community programs and services that address those risks and concerns.

**School safety allotment.** From appropriated funds, the education commissioner must provide school districts with an annual allotment for each student in average daily attendance. These funds must be used to improve school safety and security, including costs associated with securing school facilities, employing district peace officers and school marshals, training and planning, and providing programs on suicide prevention, intervention, and postvention.

## Supporters said

SB 11 would implement multidisciplinary school safety strategies designed to prevent school violence and protect Texas children. The bill would better prepare and equip schools to handle security threats and provide resources to support the mental health of students and staff. Many of the bill's provisions came from recommendations developed by the governor and legislative committees following the tragic shooting at Santa Fe High School in 2018.

**Emergency planning.** SB 11 would improve the ability of teachers and school personnel to respond to a school shooting or other emergency by requiring better emergency response planning and training. The training would be extended to substitute teachers, who have been victims of school violence in Texas. Local officials would be held accountable if they failed to follow the bill's requirements for stronger emergency operations plans.

**Threat assessment.** SB 11 would recognize the need to prevent security threats through early identification of students in crisis and the provision of services to help them. The proposed threat assessment teams would bring together multiple people with relevant expertise to identify student behaviors that could signal the desire of students to harm themselves or others. Federal and state laws protecting student educational privacy would ensure that a student who was identified through the bill's threat assessment processes would not be subjected to future consequences involving the right to own a gun.

**Facilities and funding.** School building codes would be updated to ensure best practices were used in designing and retrofitting school facilities. The bill would provide a funding mechanism that recognized the ongoing cost

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of securing school facilities and providing mental health resources. Local school officials would have flexibility to decide how to use the funding for ongoing costs of making schools safer.

## Critics said

SB 11 could lead to the profiling of students who act differently from other students as being a possible threat to school safety. The bill could result in students being wrongly identified as having mental health issues, which could lead to unnecessary treatment and medication that could pose a risk to adolescents. The bill also could have unintended consequences for students with special needs who could be viewed as a threat because they had an outburst or a bad day.

Some experts who have studied school shootings have concluded it is difficult to predict if a student will become violent. The bill could result in students being tagged as a threat, which could carry consequences for the future, such as hindering them from legally owning a gun. The bill should clarify that students should not be targeted solely because they legally own weapons that are kept away from school property.

## Notes

The HRO analysis of SB 11 appeared in Part One of the May 21 *Daily Floor Report*.

**HB 1** by Zerwas, the general appropriations act, includes \$100 million for the school safety allotment provided in SB 11. **SB 500** by Nelson, the supplemental budget bill, includes \$100 million from the Economic Stabilization Fund (ESF) for certain safety-related facility improvements and equipment purchases and \$10.9 million from the ESF to reimburse a school district for expenditures following a school shooting resulting in at least one fatality.

The 86th Legislature also enacted other bills related to school safety.

**HB 1387** by Hefner, effective June 14, 2019, removes a cap on the number of school marshals a school district or open-enrollment charter may appoint in each school. The HRO analysis of HB 1387 appeared in Part One of the May 6 *Daily Floor Report*.

**HB 496** by Gervin-Hawkins, effective June 15, 2019, requires school districts and charter schools to establish bleeding control stations and to develop a protocol for school employees and volunteers to follow in the event of a traumatic injury. The HRO analysis of HB 496 appeared in Part Two of the May 9 *Daily Floor Report*.

An analysis of SB 11's provisions regarding the establishment of a child mental health care consortium appears on Page 105.

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# Increasing contributions to the Teacher Retirement System

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## SB 12 by Huffman

*Effective June 10, 2019*

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**SB 12** increases contributions to the Teacher Retirement System (TRS) from the state, active employee members, and public education employers.

The bill sets state contributions at certain percentages of the aggregate annual compensation of all members of the retirement system according to the following schedule:

- 7.5 percent for the fiscal years beginning on September 1, 2019, and September 1, 2020;
- 7.75 percent for the fiscal year beginning on September 1, 2021;
- 8 percent for the fiscal year beginning on September 1, 2022; and
- 8.25 percent for the fiscal year beginning on September 1, 2023, and each subsequent fiscal year.

Member contributions are set at certain percentages of a member's annual compensation according to the following schedule:

- 7.7 percent for compensation paid on or after September 1, 2019, and before September 1, 2021;
- 8 percent for compensation paid on or after September 1, 2021, and before September 1, 2023; and
- 8.25 percent for compensation paid on or after September 1, 2023.

The bill also provides that for a fiscal year in which the state contribution rate is less than the rate established by the bill, member contributions will be reduced by one-tenth of 1 percent for each one-tenth of 1 percent that the state contribution rate is reduced.

Public education employers must contribute certain percentages of a TRS member's compensation according to the following schedule:

- 1.5 percent beginning with the report month of September 2019 and ending with the report

month of August 2020;

- 1.6 percent beginning with the report month of September 2020 and ending with the report month of August 2021;
- 1.7 percent beginning with the report month of September 2021 and ending with the report month of August 2022;
- 1.8 percent beginning with the report month of September 2022 and ending with the report month of August 2023;
- 1.9 percent beginning with the report month of September 2023 and ending with the report month of August 2024; and
- 2 percent beginning with the report month of September 2024 and for each subsequent report month.

Those contributions will be reduced by one-tenth of 1 percent for each one-tenth of 1 percent that the state contribution rate was less than the rate established by SB 12.

The bill requires TRS to make a one-time supplemental payment of the lesser of \$2,000 or the gross annuity payment to which the annuitant is entitled for the month preceding the month when TRS issues the payment. The state must appropriate to TRS an amount equal to the cost of the one-time supplemental payment.

### Supporters said

SB 12 would make TRS actuarially sound by incrementally increasing contributions from the state, school districts, and active employees over a five-year period. All participants in the pension system should play a role in making the pension system actuarially sound.

The bill also would provide retired school employees with a one-time supplemental payment, or "13th check," of up to \$2,000. The extra pension benefit would help retired educators pay for increased expenses, including higher health insurance costs.

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While some have suggested moving to a defined contribution retirement plan, that would not change the need to make the existing system actuarially sound, as SB 12 would do.

### **Critics said**

At a time when the Legislature is working to increase teacher pay, it should not require working teachers to contribute a higher percentage of their pay to TRS. Similarly, it is counterproductive for the Legislature to boost school funding only to have some of the additional money intended to educate Texas children repurposed because school districts are required to increase their TRS contributions.

### **Other critics said**

Texas should make the fiscally prudent transition from its defined benefit retirement plan for retired teachers to a defined contribution plan. Even if TRS is placed on a path to actuarial soundness, future generations could bear the financial risk if market expectations are not met.

### **Notes**

The HRO analysis of SB 12 appeared in Part Four of the April 16 *Daily Floor Report*.

**HB 1** by Zerwas, the general appropriations act, includes \$4.1 billion in all funds for state contributions to the TRS pension fund under prior law. **SB 500** by Nelson, the supplemental budget bill, appropriates \$1.1 billion from the Economic Stabilization Fund to TRS contingent on enactment of SB 12. This includes \$524 million to increase the state contribution for fiscal 2020-21 and \$589 million for an additional one-time payment to certain retirees.

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# Taxation and Revenue

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*Finally approved		

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# Increasing sales tax to decrease property tax

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## HJR 3 and HB 4621 by Huberty

*Died in the House*

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**HJR 3** would have increased the sales and use tax rate from 6.25 to 7.25 percent. The resulting increase in net revenue could have been used only to provide property tax relief by reducing school district maintenance and operations property tax rates. The Legislature could have increased, modified, or repealed the tax by general law.

**HB 4621**, the enabling legislation for HJR 3, would have specified that the increase in net sales and use tax revenue would be used to provide school property tax relief through the reduction of the state compression percentage, as defined in the Education Code.

### Supporters said

HJR 3 and HB 4621 together would provide property tax relief to Texans, giving them peace of mind that they would not be taxed out of their homes and businesses and promoting continued economic growth.

**Fairness.** A 1-cent increase in sales tax is a fair and efficient way to raise billions of dollars for long-term school property tax relief. Property taxes in many Texas communities have been growing faster than average income, imposing a substantial financial burden on taxpayers and causing many to be taxed out of their homes and businesses.

Sales tax is less burdensome than property tax because it is paid only when a taxable item is purchased, while property taxes are paid year after year with costs compounding over time, which hits low- and fixed-income Texans especially hard. Property tax is also less fair in that it relies on the subjective valuations of appraisal districts and tax rates set by local governments with little taxpayer input. By contrast, sales tax is based on objective market transactions with rates that have remained stable for decades. Raising the rate of the sales tax to pay for school property tax reductions also would spread the costs of government to people visiting Texas from out of state, saving in-state taxpayers money.

Texas has extensive experience with sales taxes, allowing for accurate estimates of the revenue that would be raised by increasing the sales tax. This would help the

state avoid the outcome of past attempts to lower property taxes through the margin tax and provide more permanent property tax relief.

**Stability.** HJR 3 and HB 4621 would stabilize property tax growth and give families more control over their tax bills. While families can choose to consume less in order to reduce the amount they pay in sales taxes, most cannot choose the home they own from year to year to reduce their property tax burden. By increasing the state's reliance on sales tax, HJR 3 and HB 4621 would empower Texans to determine how much they pay to state and local governments.

**Economy.** Increasing the sales tax to lower property taxes also would promote continued economic growth. Reducing property taxes would mean reducing taxes on capital, allowing businesses to make more investments and create more jobs in the state. A property tax reduction also could lead to less expensive consumer products due to decreases in retailers' rents.

### Critics said

HJR 3 and HB 4621 would increase an unfair tax that historically has proven to be an unstable source of revenue and could jeopardize the provision of public services and put Texas businesses at a competitive disadvantage compared to businesses in other states.

**Fairness.** HJR 3 and HB 4621 unfairly would shift the state's tax burden onto those least able to pay it by increasing the sales tax to pay for a decrease in property taxes. If the proposed sales tax increase were enacted, Texas would be tied with California for having the highest state sales tax rate in the nation. This increase disproportionately would affect lower income individuals, as they often pay a higher percentage of their income toward sales tax than their wealthier neighbors.

According to the Legislative Budget Board, taxpayers would not benefit from the tax swap unless they had an annual income of at least \$100,000, and households with an income of between \$100,000 and \$150,000 would receive only modest savings.



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**Stability.** HJR 3 and HB 4621 would replace a relatively stable tax base with a less stable one. Sales taxes are not a reliable source of revenue because they vary based on consumer spending. Over the past 20 years, sales tax revenues have decreased five times, while property values decreased only once. The state budget is already highly dependent on sales tax revenue. The sensitivity of sales tax to economic fluctuations has caused budgetary difficulties in the past, leading to cutbacks in public services. Increasing reliance on sales tax would make public services even more vulnerable to economic downturns.

**Economy.** Increasing the sales tax could harm the state's economy by increasing prices for consumers. Higher prices would put Texas businesses at a competitive disadvantage, discouraging shoppers from neighboring states from coming to Texas and making the state a less attractive place to locate jobs and investment.

## Other critics said

HJR 3 and HB 4621 would not provide lasting property tax relief. The state has attempted to use the margin tax to buy down property taxes in the past with little success.

## Notes

The HRO analyses of HJR 3 and HB 4621 appeared in Part One of the May 7 *Daily Floor Report*.

**HB 297** by Murr, which died in the Senate, would have eliminated school maintenance and operations property tax beginning January 1, 2022, and would have established a joint interim committee to evaluate whether increasing the rate or expanding the application of existing consumption taxes or imposing new consumption taxes could have provided for the support and maintenance of an efficient system of free public schools in the state. The HRO analysis of HB 297 appeared in Part One of the May 8 *Daily Floor Report*.

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# Collecting sales taxes from certain online purchases

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## HB 1525 and HB 2153 by Burrows

*Effective October 1, 2019*

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**HB 1525** requires marketplace providers, including those who own or operate online marketplaces, to collect taxes on items sold through their marketplaces.

The bill defines a marketplace provider as a person who owns or operates a marketplace, a physical or electronic medium through which other individuals sell taxable items. A store, website, software application, or catalogue is considered a marketplace. A marketplace provider has the rights and duties of a seller or retailer for sales made through the marketplace.

Marketplace providers must certify to each marketplace seller, defined as an individual selling taxable items through the marketplace, that the provider assumes the statutory rights and duties of a seller or retailer. Marketplace providers also must collect, report, and remit sales taxes to the comptroller. The comptroller may exempt certain marketplace providers from some or all of the bill's requirements.

Marketplace sellers must retain records for all marketplace sales and furnish to the marketplace provider information required to correctly collect and remit sales and use taxes. A provider is not liable for failure to collect and remit the correct amount of sales and use taxes if the failure resulted from the provider's good faith reliance on incorrect or insufficient information provided by a seller. In such cases, the seller is liable for a resulting deficiency. HB 1525 does not affect the tax liability of the purchaser of a taxable item.

**HB 2153** provides an optional way to compute the amount of local use tax that sellers without a physical presence in Texas are required to collect on taxable items and remit to the comptroller.

The bill establishes a single local tax rate for use by a "remote seller," defined as a seller whose only Texas activities are soliciting orders for taxable items by mail or through other communications system. A remote seller must collect and remit local use taxes using either the combined rate of all applicable local use taxes or, at the seller's election, the single local use tax rate.

The single local use tax rate is equal to the estimated average rate of local sales and use taxes imposed in Texas during the preceding state fiscal year. The comptroller must calculate the single local tax rate and publish it in the Texas Register before the beginning of every calendar year. The single local use tax rate is 1.75 percent for the period beginning October 1, 2019, and ending December 31, 2019.

A remote seller who elects to use the single local use tax rate must notify the comptroller before using it. The rate applies to all sales of taxable items made by the remote seller unless the remote seller revokes the election.

A purchaser may apply annually for a refund of any amount paid under the single local use rate that exceeds the amount the purchaser would have paid using the combined local use rate. A person who purchases a taxable item from a remote seller using the single local use tax rate is not liable for any additional amount of authorized local use tax.

HB 2153 also revises requirements that the comptroller apportion and distribute revenue from local sales and use taxes, including taxes computed using the single local use tax rate. Under the bill, revenue must be transmitted on a monthly, rather than a quarterly, basis to eligible taxing units.

## Supporters said

HB 1525 and HB 2153 are necessary to implement the collection of sales and use taxes from marketplaces and remote sellers following the U.S. Supreme Court's decision in *South Dakota v. Wayfair*.

In *Wayfair*, the Court decided a state may require certain sellers that are not physically located in that state to collect state and local taxes. As a result, the comptroller may now require out-of-state retailers selling products to Texas residents to collect local sales and use taxes. Because Texas has about 1,600 local taxing jurisdictions, many of which overlap, concerns have been raised about the ability of remote sellers to correctly identify and collect applicable

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taxes. There also have been questions about how to collect sales taxes from online marketplaces that facilitate purchases from third-party sellers. HB 1525 and HB 2153 would address these problems.

HB 1525 would make marketplace providers, including large online marketplaces, liable for collecting sales taxes for purchases like other sellers and retailers under the Tax Code. Third-party sellers making sales through a marketplace would have no liability unless they provided incorrect or insufficient information to the marketplace provider. Online marketplaces are a growing market and need clear and consistent rules for collecting and remitting taxes, which this bill would provide.

HB 2153 would create a simple and effective way for out-of-state sellers of items purchased by Texans to comply with state law. The bill would allow remote sellers to collect a single local tax instead of calculating the different taxes imposed by local governments at each shipping destination. The tax rate would be determined by the comptroller annually and based on the average rate of local sales and use taxes imposed the previous fiscal year. The bill would set the initial single local tax rate at 1.75 percent, making the combined state and local tax rate for remote sales 8 percent.

Under HB 2153, sellers would not have to keep up with various local tax rates but instead could use the single local tax rate for all purchases. Sellers could decide how to calculate the amount of local tax they must collect, so businesses would not be excessively burdened, and the legislation would level the playing field between local and remote sellers by ensuring both paid their fair share. These bills also could bring in a combined \$500 million to Texas during the next biennium, according to the Legislative Budget Board, providing vital support for public programs.

The bills would not create a new tax but ensure that all purchases made in the state were taxed equally and fairly under state law. Several large online retailers and marketplaces already collect sales taxes in Texas, and taxpayers will not see changes to in-state purchases.

### **Critics said**

HB 1525 and HB 2153 effectively would impose a new tax on online purchases made from out-of-state retailers, raising the cost of everyday items for Texans.

### **Notes**

The HRO analyses of HB 1525 and HB 2153 appeared in Part Two of the April 10 *Daily Floor Report*.

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# Amending the property tax system and reducing the rollback tax rate

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## SB 2 by Bettencourt

*Generally effective January 1, 2020*

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SB 2 requires certain taxing units that propose a property tax rate exceeding the voter-approval tax rate to hold an election to approve the proposed rate. The bill limits to 3.5 percent the amount by which most taxing units other than school districts and certain special taxing units may increase property tax revenue for maintenance and operations, not including revenue from new properties, without holding an election.

The bill also revises the requirements for elections to approve an adopted tax rate and revises the administration and state oversight of taxing units, appraisal districts, appraisal review boards (ARBs), and property tax arbitration.

**Terminology.** SB 2 renames certain statutory terms, including:

- the “rollback tax rate,” which is renamed the “voter-approval tax rate”;
- the “effective tax rate,” which is renamed the “no-new-revenue tax rate”; and
- the “effective maintenance and operations rate,” which is renamed the “no-new-revenue maintenance and operations rate.”

**Voter-approval tax rate.** The bill provides two methods for calculating the voter-approval tax rate for a taxing unit based on whether it is a special taxing unit. A “special taxing unit” includes certain taxing units, other than school districts, with maintenance and operations tax rates of no more than 2.5 cents per \$100 of taxable value as well as junior college districts and hospital districts.

The voter-approval tax rate of a taxing unit other than a school district or special taxing unit is equal to a 3.5 percent increase in its no-new-revenue maintenance and operations rate, plus its current debt rate and its unused increment rate. The unused increment rate is the amount by which a taxing unit’s voter-approval tax rate exceeded its actual tax rate in the preceding three years, if at all.

The voter-approval tax rate of a special taxing unit remains equal to an 8 percent increase in the unit’s no-

new-revenue maintenance and operations rate, plus its current debt rate:

Under the bill, the governing body of a taxing unit may calculate its voter-approval tax rate in the same manner as a special taxing unit if any part of the unit is located in a declared disaster area. The taxing unit may use this calculation until the earlier of either the second tax year in which the total taxable value of property taxable by the unit exceeds the total taxable value of such property on January 1 of the tax year in which the disaster occurred or the third year after the tax year in which the disaster occurred.

**Elections.** The bill requires certain taxing units to hold an automatic election to approve a tax rate that exceeds the voter-approval tax rate of a special taxing unit or a municipality with a population of 30,000 or more. If a taxing unit increases expenditures to respond to a disaster other than a drought and the governor has declared part of the taxing unit as a disaster area, the taxing unit is not required to hold an election to approve the adopted tax rate for the year after the disaster occurs.

In certain circumstances when an automatic election is not required for a tax rate exceeding the voter-approval tax rate of a taxing unit, other than special taxing units, school districts, or cities with a population of 30,000 or more, SB 2 allows qualified voters to petition for an election to determine whether to reduce the tax rate adopted by the governing body to the voter-approval tax rate. A petition is valid if it is signed by at least 3 percent of voters.

**Appraisal districts.** SB 2 amends requirements for appraisal districts, including imposing greater restrictions on who may serve on an appraisal district board of directors or be employed by an appraisal district. It requires appraisal districts to notify homeowners on homestead exemption eligibility and certain canceled or reduced exemptions and requires appraisal districts to conduct appraisals pursuant to manuals published by the comptroller. The bill also creates an exception to the offense of ex parte communication between a member of the appraisal district board of directors and chief appraiser

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regarding certain complaints by property owners or a taxing units. Under SB 2, taxpayers may opt in to receive certain notices by e-mail.

**Appraisal review boards.** The bill revises the composition and hearing procedures of ARBs, specifying the times when protest hearings may be conducted, requiring appraisal districts to deliver copies of information that will be presented to property owners before the hearings upon request, prohibiting appraisal districts from challenging the level of appraisals of a category of property at a hearing, providing guidelines for ARBs to follow when making a determination, and requiring survey forms to be made available to hearing participants.

Appraisal districts in counties with populations of 1 million or more must establish special panels to conduct certain high-dollar protest hearings for commercial, utility, industrial and manufacturing, and multifamily residential properties.

**Appeals.** SB 2 imposes additional training requirements on arbitrators and removes some residency requirements for arbitrators eligible for appointment to hear an appeal. Property owners involved in an appeal may request that the comptroller appoint an arbitrator that resides in the same county as the property or outside that county. The comptroller must comply with the request unless no such arbitrator is available or the appointment is for a substitute arbitrator.

A taxing unit that imposes taxes subject to an appeal is prohibited from filing a suit to collect delinquent tax while the appeal is pending.

**Rate setting.** SB 2 changes procedures by which a taxing unit may set its tax rate and revises notice requirements. Appraisal districts must maintain property tax databases, and taxing units and counties must maintain websites with property tax information. Taxing units are no longer required to send certain notices of property tax information to taxpayers by mail or to publish tax rates in a newspaper, but they must publish this information on their websites.

**State administration.** SB 2 requires the comptroller to appoint a property tax administration advisory board to provide advice on state administration of property taxation and state oversight of appraisal districts. The advisory board must be composed of at least six members, including a person with knowledge or experience in ratio

studies and representatives of property tax payers, appraisal districts, assessors, and school districts.

The bill adds tax rates imposed by school districts to the comptroller's annual list of tax rates across the state. Procedures also are created for the comptroller and the Texas Department of Licensing and Regulation to address continuing errors in a school district's property valuation.

## Supporters said

SB 2 would enable Texans to slow the increase in local property taxes and would encourage local governments to make more efficient budgetary decisions. The bill also would improve transparency of and allow for more standardization in the property tax system.

**Spending.** SB 2 would encourage more efficient government spending by requiring local governments either to convince voters that certain property tax increases were necessary for funding specific projects or services or to cut costs in other areas to avoid an election. If desired spending concerned matters with broad community support, such as public safety, local governments would have nothing to fear from such elections.

The bill would provide budgetary flexibility by allowing local governments that had not exceeded the voter-approval tax rate in prior years to bank the unused amount from the previous three years and put that unused increment rate toward raising the voter-approval tax rate in a subsequent year. This also would incentivize local governments to adopt a tax rate below the voter-approval tax rate to save that unused amount in anticipation of future needs. Local governments also could use the higher, 8 percent voter-approval tax rate for up to three years after being declared a disaster area.

A 3.5 percent limit on increased property tax revenues would still be above the average rate of inflation in the state. The limit would not include revenue from new properties and so would not burden local governments of growing areas.

**Taxes.** SB 2 would alleviate the increasing burden of property taxes for Texas homeowners and businesses. Property taxes in many Texas communities have been growing faster than the average income, imposing a substantial financial burden on taxpayers. Rising property taxes have caused Texans to be taxed out of their homes, not buy homes at all, go out of business, or cut crucial

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areas of their budgets. SB 2 would give voters a greater say in whether increases in property taxes were warranted and would prevent the state's economic growth from being undermined by these taxes.

**Local control.** SB 2 would not prohibit local governments from increasing property tax rates beyond 3.5 percent but would require voter approval of that increase, returning control to voters and providing them with greater oversight over the budgetary decisions of local governments.

**Transparency.** The bill would improve the transparency and efficiency of the property tax system by providing taxpayers with real-time access to tax information, revising required notices to avoid confusion, using easier-to-understand terminology, and generally making the process more taxpayer friendly.

**Standardization.** SB 2 would improve state oversight of appraisal districts, ARBs, and property tax arbitration. The requirement that appraisal districts use the comptroller's appraisal manual would standardize and clarify the appraisal process.

## Critics said

SB 2 would limit local governments' ability to provide critical services and usurp local control with a state-mandated, one-size-fits-all property tax cap, all while saving taxpayers relatively little.

**Spending.** SB 2 could make it difficult for local governments to pay for existing public safety and other critical services, let alone new services to meet the needs of a growing population. Most cities in Texas spend about two-thirds of their budget on public safety. Some budget growth is driven by rising costs of living due to health insurance cost increases, wage increases, and inflation. Population growth and economic development also require cities to further expand services.

A 3.5 percent voter-approval tax rate is so low that many local governments could see a budget crisis even during average years. Such a low voter-approval tax rate could inhibit the ability of local governments to attract big employers, slowing economic growth in Texas. The bill also would limit the ability of local governments to deal with emergencies and could lead to long-term cuts in property tax receipts in the event of a decrease in property values due to a recession.

In order to avoid cost-cutting, elections could be held every year to approve property tax increases. These elections not only would cost millions and create a great deal of uncertainty but also could damage the credit ratings of local governments and prevent them from entering into long-term contracts due to increased uncertainty.

**Taxes.** SB 2 would provide only modest savings to taxpayers compared to the costs for local governments and could lead to unintended consequences. Local governments could be led to adopt a tax rate equal to the voter-approval tax rate each year, even when additional revenue in that amount was not needed, in order to save for unforeseen contingencies. To avoid cutting spending on critical public safety and infrastructure, some cities could rescind the homestead, senior, and disabled exemptions, which are more effective mechanisms for providing tax relief than lowering the voter-approval tax rate. Some local governments also could turn to higher sales taxes and fees to make up for the revenue shortfall, all of which could impose a greater financial burden on those least able to pay.

**Local control.** SB 2 would reduce local control by applying a one-size-fits-all approach to property taxation. Local governments have diverse needs, and local officials are in a better position than state legislators to understand the unique needs of their community. The bill would make it difficult for local officials to respond to these needs.

**Transparency.** By eliminating the requirement that taxing units send rates to taxpayers by mail or publish the rates in a newspaper, SB 2 might decrease transparency.

## Notes

The HRO analysis of HB 2 by Burrows, the House companion to SB 2, appeared in the April 2 *Daily Floor Report*.

**HB 380** by Geren, which took effect September 1, 2019, allows district courts to remand certain property tax matters to appraisal review boards and expands the appraisal review board orders that a property owner may appeal. The HRO analysis of HB 380 appeared in Part Three of the April 16 *Daily Floor Report*.

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# Transportation

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\*Finally approved

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# Prohibiting red light cameras

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## HB 1631 by Stickland

*Effective June 2, 2019*

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**HB 1631** prohibits a local authority from implementing or operating a photographic traffic signal enforcement system. The attorney general is required to enforce this prohibition. The bill also prohibits a local authority from issuing a civil or criminal charge or citation for an offense or violation based on a recorded image produced by a photographic traffic signal enforcement system.

The bill repeals most of Transportation Code ch. 707 and other provisions related to the implementation and operation of a photographic traffic signal enforcement system, including penalties for violations and the deposit of revenues from those penalties.

Under the bill, if a local authority enacted an ordinance to implement a photographic traffic signal enforcement system and entered into a contract to administer and enforce the system before May 7, 2019, the authority may continue to operate the system until the contract expires. Such a system and any proceeding initiated or penalty imposed are governed under former law. This exception does not apply to contracts that authorize termination on the basis of adverse state legislation.

Neither the Texas Department of Motor Vehicles nor a county assessor-collector may refuse to register a motor vehicle alleged to have violated former Transportation Code ch. 707 solely because the vehicle owner is delinquent in the payment of a civil penalty imposed under that chapter and permitted through an existing contract.

### Supporters said

HB 1631 would prohibit the use of red light cameras, ending a harmful practice that deprives citizens of their due process rights. Individuals accused of running a red light are forced to face a camera as their accuser, rather than an officer present at the scene, and are presumed guilty until proven innocent.

**Due process.** Red light cameras capture the image of a license plate of a car that enters an intersection when

the light turns red, ticketing the car's owner rather than the driver. Since the cameras cannot take a picture of the individual due to privacy rights, there is no way to prove who was driving the car. Further, it is cumbersome for people to prove their innocence, as they often must appear in person to appeal the ticket and pay a fee.

Claims that red light cameras do not need to provide due process because tickets are issued in the same manner as parking tickets are misleading, because a moving violation and a parking violation are separate violations under state law and receive different penalties. There also could be issues with the practice of police officers acting like judges by deciding when to dismiss charges against a person through an administrative review.

**Safety.** HB 1631 would make communities safer, as studies have shown that rear-end crashes increase when a red light camera system is installed at an intersection. Rather than following the normal flow of traffic, drivers brake too quickly upon entering an intersection with a camera to avoid getting ticketed, leading to crashes. Studies also showed that red light cameras do not necessarily end the practice of running red lights, as individuals still run them and then never pay the ticket. Since there is not a strong payment enforcement system, the cameras do not have the desired deterrent effect.

**Citation revenue.** By ending the use of red light cameras, HB 1631 also would prevent cities from being incentivized to issue tickets to increase revenues. While the bill would end the receipt of ticket revenues by cities and the Trauma Facility and EMS Account, those could be funded through other revenue sources if the Legislature wanted to continue to fund trauma centers.

**Local control.** The bill would continue the statewide movement to end the use of red light cameras. In every city election on whether to use red light cameras, local residents have voted against them.

### Critics said

HB 1631 would remove an important public safety tool by prohibiting the use of red light cameras.



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Communities should retain the ability to choose to use red light cameras at dangerous intersections to fix driver behavior, save lives, and assist law enforcement.

**Due process.** Due process is provided when an individual is cited through red light camera systems. Officers monitor the cameras and will cite vehicles at their discretion; it is not an automatic ticketing process. Vehicle owners who did not run red lights can appeal their citations.

The process of making citations based on camera footage is similar to a parking citation, which is imposed on the owner of the vehicle regardless of who is driving it, or any other footage used as evidence of a crime. If the Legislature does not agree with this practice, members should revise the process of issuing citations rather than repealing all red light cameras.

**Safety.** City data has shown that red light cameras reduce the number of crashes at intersections and curb risky driver behavior. Communities typically install cameras only at the most dangerous intersections, and these camera systems have been proven to work. The use of such systems allows law enforcement officers in the field to be flexible rather than having to patrol a single intersection. If a driver runs a red light, an officer would have to run that same red light to pursue the violator. Red light cameras keep officers and the public safe.

**Citation revenue.** HB 1631 also would cost the Trauma Facility and EMS Account millions of dollars each year, since 50 percent of the fines and penalties collected for traffic violations relating to traffic cameras are deposited to the account. This account funds designated trauma facilities, county and regional emergency medical services, trauma-care systems, and certain graduate-level medical and nursing education programs.

**Local control.** The bill would remove local control on traffic and public safety decisions. If local residents do not believe that a red light camera is useful in their community, they may end the practice by a local election. Local citizens should decide what is best for their own community.

## Notes

The HRO analysis of HB 1631 appeared in Part Three of the May 6 *Daily Floor Report*.

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# Revising toll road billing and enforcement

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## HB 1951 by Krause

*Died in the House*

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**HB 1951** would have authorized limited comprehensive development agreements (CDAs); repealed certain state, county, and regional toll billing and enforcement regulations; and replaced those provisions with toll regulations applicable to more than one type of toll project.

**Comprehensive development agreements.** The bill would have allowed the Texas Department of Transportation (TxDOT) to enter into a CDA with a private entity for a toll project if:

- the estimated capital costs for construction exceeded \$1 billion;
- TxDOT demonstrated that state funding was not available without significant reprioritization of existing funds; and
- construction did not require the use of the State Highway Fund.

TxDOT could have entered into no more than two CDAs in a fiscal year.

**Voter approval.** HB 1951 would have prohibited TxDOT or a private entity from constructing or operating a project subject to a CDA unless it was approved by a majority of voters in the counties in which the project would be located. An election could not have been held within five years of a previous election to approve the same or a substantially similar project.

**Toll collection and enforcement.** HB 1951 would have specified that the operator of a vehicle that was driven or towed through a toll collection facility would pay the proper toll, unless the vehicle was an authorized emergency vehicle. The bill would have allowed a toll project entity to waive or reduce the toll for any vehicle or class of vehicles.

**Toll invoice.** The bill would have required a toll project entity to use video billing or other tolling methods as an alternative to requiring payment at the time a vehicle was driven through a collection facility. A toll project entity still could have used automated enforcement technology, including video recordings, photography, electronic data,

or other methods to identify the registered owner of the vehicle for billing, collection, and enforcement.

A toll project entity would have had to mail to the registered owner of a vehicle a written invoice containing a toll assessment. If the owner had agreed to the terms, a toll project entity could have provided the invoice as an electronic record instead.

**Collection.** A toll invoice would have had to require payment within 30 days of being mailed and conspicuously state the amount due, the due date, and that failure to pay would result in an administrative fee. A toll project entity could have added an administrative fee of up to \$6 for failure to comply. Administrative fees could not have exceeded the cost of collecting the toll or \$48 per year.

**Enforcement.** A person who received two or more invoices for unpaid tolls without paying would have been subject to a civil penalty of \$25. Only one civil penalty could have been assessed in a six-month period. An appropriate district or county attorney could sue to collect the penalty, toll, and administrative fees.

**Confidentiality.** Information used for toll collection and enforcement would have been confidential and not subject to public disclosure laws.

**Regional authorities.** Regional tollway authorities and regional mobility authorities would have had the same powers and duties as TxDOT and certain counties for toll collection and enforcement for the authorities' turnpike projects and other toll projects.

**Repealed provisions.** Several Transportation Code provisions separately regulating state, county, and regional toll projects would have been repealed. The bill also would have repealed a provision making nonpayment of tolls within a certain time frame a misdemeanor punishable by a fine of up to \$250, and a provision making the operation of a vehicle on a county project having failed to pay tolls within a certain timeframe a class C misdemeanor (maximum fine of \$500).

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HB 1951 would have repealed provisions on habitual toll violators who had aggregated 100 or more events of nonpayment in a year, including the authorization of a county assessor-collector to refuse to register the vehicle of a habitual violator.

## Supporters said

HB 1951 would bring necessary reform to toll roads by revising and consolidating regulations and allowing the Texas Department of Transportation (TxDOT) to partner with private entities through comprehensive development agreements (CDAs). Regulation of toll projects currently is under separate provisions of Transportation Code based on whether the toll was operated by TxDOT, a regional authority, or certain counties.

**Late fee cap.** HB 1951 would not prevent toll authorities from collecting tolls, which should be their primary source of revenue. Authorities should not rely on assessing late fees or penalties to fund toll projects and should be able to pay for debt and operating costs through normal toll revenues.

**Toll enforcement.** HB 1951 would remove toll enforcement practices that can trap individuals in debt by piling administrative fees on low-income Texans who cannot afford the tolls but must access toll roads for work. Under the bill, an individual who does not pay a toll could receive a civil penalty, which is more appropriate than a criminal penalty. People should not be criminalized or prevented from using their vehicles due only to their inability to pay a toll.

**Toll billing.** While HB 1951 may change the billing practices of certain regional authorities, it would provide uniform billing regulations to fix the current patchwork of regional toll road billing procedures. Toll users have reported receiving a bill for one toll but paying that money to a different tolling authority, proving that the current billing system is not working. HB 1951 would streamline the billing process, providing greater clarity and transparency and ensuring that users were not confused about how and to whom toll bills should be paid.

**Comprehensive development agreements.** The bill would restore the ability of private entities to enter into a CDA with TxDOT in a limited manner and only if a majority of voters approved the project. CDAs provide necessary financing for transportation projects, which cumulatively require many billions of dollars to construct. Public-private partnerships under a CDA can provide an

alternative method of financing for these projects, and the bill would ensure that TxDOT could enter into only two each year and only for projects that the department could not otherwise fund.

## Critics said

HB 1951 would restrict the ability of tolling authorities to use billing and enforcement practices developed over years of operations that have proven to be efficient at collecting tolls, flexible for irregular toll violators, and responsive to local communities.

**Late fee cap.** By capping the administrative late fee on all toll authorities, HB 1951 would cause regional authorities to lose money, potentially millions of dollars. Several toll authorities are supported through local property taxes to ensure that debt service or maintenance and operations are paid for if toll revenues do not cover that cost. If authorities cannot fully collect all revenue, they may have to assess property taxes to make up for that money. This loss of revenue also is problematic for county or regional authorities that are not backed by the full faith and credit of the state and could have their bond ratings lowered.

**Toll enforcement.** HB 1951 would remove certain toll collection enforcement measures, compounding the issues potentially caused by capping the administrative late fee. Current law ensures that people who take advantage of a toll project and never intend to pay are labeled as habitual violators and have their vehicle registration blocked until payment is made. They may even receive a criminal penalty. The bill would remove all of these measures, leaving toll enforcement practices toothless and preventing toll authorities from collecting payments.

**Toll billing.** The bill would remove local flexibility in billing by requiring regional authorities to use pay-by-mail as an alternative means of revenue collection. Pay-by-mail is not as efficient as collecting tolls at the time of transaction. Camera technology can make mistakes capturing license plate numbers and the collection of toll revenue through pay-by-mail is cumbersome and costly for authorities, leading to a lower percentage of collection.

## Other critics said

Rather than expanding the number of CDAs in the state, the Legislature should remove private toll roads. Private toll projects tax citizens for the use of public roads,

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unfairly burdening motorists who already pay for the roads through other taxes and fees, including the gas tax. CDAs are public-private partnerships that privatize the benefits and socialize the risks of transportation projects. Allowing for more CDAs also would be unnecessary, since TxDOT already has the ability, scope, and funding to deliver large projects through traditional procurement methods.

## Notes

The HRO analysis of HB 1951 appeared in Part Four of the May 7 *Daily Floor Report*.

Other bills enacted revise certain toll road operations, mostly toll invoices.

**SB 198** by Schwertner, effective September 1, 2019, requires TxDOT to provide electronic toll collection customers with an option to authorize automatic toll payment through withdrawal of funds from the customer's bank account. The bill adds other requirements for both toll projects and customers relating to electronic toll payment. The analysis of SB 198 appeared in the May 13 *Daily Floor Report*.

**HB 803** by Patterson, effective September 1, 2019, requires a toll project entity to publish on its website a financial report each fiscal year. The HRO analysis of HB 803 appeared in the May 2 *Daily Floor Report*.

**SB 1311** by Bettencourt allows tolling entities to send an invoice or notice electronically if the recipient agrees to the transmission, effective September 1, 2019. The HRO analysis of SB 1311 appeared in Part Two of the May 21 *Daily Floor Report*.

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# Repealing the Driver Responsibility Program

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**HB 2048 by Zerwas**

*Effective September 1, 2019*

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**HB 2048** repeals the Driver Responsibility Program (DRP) and requires the Department of Public Safety (DPS) to reinstate any driver's license that was suspended for failure to pay a program surcharge. The bill also increases state traffic and intoxicated driver fines, increases the vehicle insurance fee, and directs funds from certain fines and fees to the Designated Trauma Facility and Emergency Medical Services (EMS) Account.

**State traffic fines.** HB 2048 increases the state traffic fine from \$30 to \$50. A municipality or county may retain 4 percent, rather than 5 percent, of collected fines as a service fee.

The bill increases from 67 percent to 70 percent the amount of collected fines deposited to the general revenue fund and decreases the portion deposited to the Designated Trauma Facility and EMS Account from 33 percent to 30 percent.

**Intoxicated driver fines.** HB 2048 requires a person convicted of an offense for operating a motor vehicle while intoxicated to pay a fine of:

- \$3,000 for the first conviction within 36 months;
- \$4,500 for a subsequent conviction within 36 months; or
- \$6,000 for a conviction if the person's alcohol concentration level was 0.15 or more.

A county or municipality may retain 4 percent of the collected money as a service fee and may retain any accrued interest if the county or municipality meets certain requirements. The remainder of the funds collected from such fines must be remitted to the comptroller quarterly.

From the fines collected for the offense of driving while intoxicated and remitted to the comptroller, 80 percent is deposited to the general revenue fund to be used only for criminal justice purposes and 20 percent is deposited to the Designated Trauma Facility and EMS Account.

**Indigency waiver.** If a court with jurisdiction over an offense of operating a motor vehicle while intoxicated makes a finding that the person is indigent, the court must

waive all fines and costs. A person must provide certain information to the court to establish indigency, and a list of documentation that may be used as proof is provided in the bill.

**Motor vehicle insurer fees.** The bill increases the fee insurers must pay for the issuance of motor vehicle insurance policies from \$2 to \$4 multiplied by the total number of motor vehicle years of insurance issued by the insurer.

From these collected fees, 20 percent must be appropriated to the Automobile Burglary and Theft Prevention Authority, 20 percent to the general revenue fund to be used only for criminal justice purposes, and 60 percent to the Designated Trauma Facility and EMS Account.

**Designated Trauma Facility and EMS Account.** HB 2048 changes the designation of money appropriated from the Designated Trauma Facility and EMS Account by:

- decreasing from 96 to 94 percent the amount used to fund a portion of the uncompensated trauma care provided at state trauma facilities;
- increasing from not more than 2 percent to 3 percent the amount used to fund supplies, operational expenses, education and training, and other equipment for local emergency medical services; and
- requiring the commissioner to use 2 percent, rather than allowing the commissioner to use up to 1 percent, of the amount for the operation of the 22 trauma service areas and for equipment, communications, and education and training for the areas.

The bill applies to any surcharge pending on its effective date of September 1, 2019, regardless of when the surcharge was imposed.

## Supporters said

HB 2048 would repeal the unpopular and unfair Driver Responsibility Program (DRP) and ensure a new

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stream of revenue for the Designated Trauma Facility and Emergency Medical Services (EMS) Account. While originally intended to hold bad drivers accountable for risky behavior, the DRP actually holds low-income Texans in a cycle of mounting debt and has generated inadequate funds for the trauma account. The bill would release Texans from debt by repealing the DRP and would reinstate any suspended driver's licenses, allowing individuals affected by the program to get back to work and to their lives.

HB 2048 also would ensure a sustainable revenue source for the Trauma Facility and EMS Account, which offsets the uncompensated trauma care costs for the approximately 130,000 Texans who are hospitalized in trauma centers each year. Instead of being funded by the ineffectual DRP, the trauma account would receive money from an increase in state traffic fines, fines for driving while under the influence or intoxicated, and automobile insurance policy fees. These fines and fees are all related to the operation of vehicles or the reckless use of a vehicle, so it would be appropriate to use them to fund the trauma account, which supports individuals harmed in motor vehicle collisions.

Concerns that HB 2048 would target the insurance industry are unfounded, since the modest increase in automobile insurance fees would spread the responsibility to fund the trauma account fairly to all drivers in the state. This mechanism also would ensure that the Automobile Burglary and Theft Prevention Authority received funds necessary for statewide operations and for expansion of the authority.

## **Critics said**

While the DRP should be repealed, HB 2048 unfairly would target the automobile insurance industry to cover the costs of the Designated Trauma Facility and Emergency Medical Services Account. The Legislature already increased the fee on insurance policies in 2011, and these costs are ultimately placed on customers, who should not have this burden. This also would make insurers in Texas less competitive than those of other states by taxing in-state insurance policies at a higher rate.

## **Notes**

The HRO analysis of HB 2048 by Zerwas appeared in Part Two of the April 29 *Daily Floor Report*.

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# Financing transportation projects for counties affected by oil, gas production

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**SB 500 by Nelson, HB 1 by Zerwas, HB 4280 by Morrison**

*SB 500 effective June 6, 2019, HB 1 and HB 4280 effective September 1, 2019*

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The 86th Legislature passed multiple bills financing the county Transportation Infrastructure Fund grant program and revising the distribution of grants. The Transportation Infrastructure Fund is a dedicated fund in the state treasury outside the general revenue fund. It may be used to provide grants for county transportation infrastructure projects in areas of the state affected by increased oil and gas production.

**SB 500**, the supplemental budget bill, appropriates \$125 million from the Economic Stabilization Fund to the Texas Department of Transportation (TxDOT) for fiscal 2020-21 to provide grants for Transportation Infrastructure Fund projects.

**HB 1**, the general appropriations act, allocates \$125 million from any available source of revenue from the amount appropriated to TxDOT to provide grants for Transportation Infrastructure Fund projects. The bill states that it is the intent of the Legislature that this is a one-time allocation for fiscal 2020-21.

**HB 4280** amends certain provisions of the county Transportation Infrastructure Fund grant program, including the formula for grant distribution and competitive bidding requirements for projects funded by a program grant. The bill specifies that TxDOT may make grants from the Transportation Infrastructure Fund to counties only for transportation infrastructure projects located in areas affected by increased oil and gas production.

The bill decreases from 20 percent to 10 percent the percentage of grants allocated to counties according to the ratio of weight tolerance permits issued in a county as compared to the total number of such permits issued in the state during the previous fiscal year. The allocation of grants to counties according to the ratio of well completion in a county as compared to that in the state is separated between horizontal and vertical well completion. Under the bill, horizontal well completion must account for 45 percent of grant allocation, and vertical well completion must account for 15 percent.

A county must use a competitive bidding process to contract for a transportation infrastructure project to build or maintain roads that is funded by a program grant. A grant awarded from the program must be spent within five years.

## Supporters said

It is necessary to appropriate funds to the Transportation Infrastructure Fund grant program to address the fiscal and public safety needs of counties affected by oversize and overweight truck traffic resulting from energy-sector operations. The current state of disrepair of county roads presents a safety issue to local communities. Traffic fatalities have increased drastically in areas of high oil and gas production. HB 4280 would reasonably govern the distribution of those grants, ensuring that the funds went only to affected counties and that the program used a competitive bidding process.

HB 4280 and the appropriations made by SB 500 and HB 1 would be a good first step to complement county efforts to repair roads and would represent an investment in the oil and gas industry. The energy sector would have higher production levels if trucks could more easily and safely transport goods on county roads, and the state and counties would receive more severance tax revenues.

## Critics said

While the appropriations in HB 1 and SB 500 would be a step in the right direction, they would not go far enough to provide funding for the county Transportation Infrastructure Fund grant program. The state should invest more than \$250 million in the program because current county needs for road repair projects estimated to cost more than \$1 billion have been identified in areas of high energy production. County budgets, even including oil and gas severance tax revenues, are not enough to cover the costs of building and maintaining roadways. If lawmakers do not appropriately fund the grant program, counties

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will have to raise property taxes and the cost of repairing county roads will continue to increase.

## Notes

The HRO digest of HB 4280 appeared in Part Three of the May 6 *Daily Floor Report*. The HRO analysis of SB 500 appeared in the March 27 *Daily Floor Report*.



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# Continuing the Texas Department of Motor Vehicles

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## SB 604 by Buckingham

*Effective September 1, 2019*

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**SB 604** continues the Texas Department of Motor Vehicles (TxDMV) until September 1, 2031, and adopts certain policy recommendations from the Sunset Advisory Commission. It also authorizes digital license plates for certain vehicles and requires a study on alternatively fueled vehicles.

**Registration and titling.** SB 604 requires a county tax assessor-collector who awards a contract to a full service deputy for the performance of registration and titling services to comply with standard state contracting practices as if the assessor-collector were a state agency. Contracts in effect before the bill's effective date must be rebid by March 31, 2020.

Under the bill, TxDMV has sole authority to determine access to the registration and titling system (RTS). TxDMV must implement a training program by December 1, 2019, providing information on the RTS and on identifying fraudulent activity related to registration and titling.

By March 1, 2020, TxDMV, in coordination with county tax assessors-collectors, must develop and implement rules creating clear criteria for the suspension or denial of access to the RTS if an assessor-collector suspected abuse, fraud, or waste relating to the system by an employee or deputy. The bill also requires TxDMV to establish a risk-based system of monitoring and preventing fraudulent activity in vehicle registration and titling.

Each county assessor-collector must make available to motor vehicle dealers by September 1, 2020, the electronic system designed by TxDMV allowing a dealer to submit a title and registration application online in the name of the vehicle purchaser.

**Contested cases and rulemaking.** The TxDMV board must establish standards for reviewing a contested case that specify the role of certain personnel, specify appropriate conduct and discussion on proposals for decisions issued by administrative law judges, and meet other requirements as specified in the bill.

**Motor Vehicle Crime Prevention Authority.** SB 604 renames the Automobile Burglary and Theft Prevention Agency the Motor Vehicle Crime Prevention Authority. The authority may enter into contracts in its own name with grant recipients and must annually update standard performance measures for each category of grants.

**Licensure changes.** SB 604 eliminates the representative's license for a person who is an agent or employee of a manufacturer, distributor, or converter and promotes the distribution or sale of new motor vehicles. It also eliminates the salvage vehicle agent license and the classification and endorsement system under a salvage vehicle dealer license. The holder of a salvage vehicle dealer license may perform any of the activities of a salvage vehicle dealer. Instead of expiring a year after issuance, a salvage vehicle dealer license is valid for a period prescribed by the TxDMV board.

**Independent dealer training.** SB 604 requires an applicant for an original or renewal general distinguishing number who proposes to be an independent motor vehicle dealer to complete web-based training approved by TxDMV. TxDMV may not require a person to complete the training if they have held a general distinguishing number for at least 10 years.

**Motor vehicle shows and exhibitions.** The bill removes a requirement that a person receive written approval from TxDMV before participating in a new motor vehicle show or exhibition.

**Digital license plates.** Certain vehicles may be equipped with a digital license plate placed on the rear of the vehicle in lieu of a physical license plate. A vehicle may be equipped with a digital license plate only if it is part of a commercial fleet, is owned or operated by a governmental entity, or is not a passenger vehicle. The vehicle owner still must obtain a physical license plate and place it on the front of the vehicle unless otherwise exempt.

A digital license plate must display the same information required for a physical license plate at all

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times and in all light conditions, have wireless connectivity capability, and provide benefits to law enforcement that meet or exceed the benefits of physical plates. Digital plates are subject to the same applicable state laws as physical plates.

The bill requires the TxDMV board, in consultation with the Department of Public Safety, to set specifications and requirements by rule for digital license plates and their placement.

**Alternatively fueled vehicles study.** SB 604 requires TxDMV, using existing funds, to organize a study on the impact of the alternatively fueled vehicles industry on the state, options for collecting fees from vehicle owners to replace the loss of revenue from motor fuel taxes, and the feasibility and desirability of such fees.

By December 1, 2020, TxDMV must submit the results of the study and legislative recommendations to the governor, lieutenant governor, House speaker, and the Legislature.

**Other provisions.** SB 604 adopts several across-the-board Sunset recommendations, including provisions on complaints, alternative dispute resolution, and board member training and membership. The bill repeals provisions exempting an advisory committee established by TxDMV from being required to provide balanced representation between the industry and consumers.

## Supporters said

SB 604 would continue the Texas Department of Motor Vehicles (TxDMV) for 12 years, as the agency has largely accomplished the Legislature's goals for improved performance, according to the Sunset Advisory Commission. TxDMV is needed to continue to provide motor vehicle services and regulate industries that can harm the public. The bill also would adopt certain Sunset recommendations clarifying rules on contested cases, removing unnecessary licenses, and instituting better enforcement practices.

**County contracting requirements.** By requiring counties to use standard state contracting processes when contracting full-service deputies for registration and title services, SB 604 would ensure that counties followed basic, good-government practices when outsourcing state services. This would provide better oversight, enhance security, and improve competition and transparency. The bill also would require TxDMV to assist counties and

would give counties enough time to rebid existing deputy contracts.

**Online registration system.** The bill would require TxDMV to ensure that the electronic registration and title service for automobile dealers, known as webDEALER, was available to dealers in all counties by September 1, 2020. This would ensure that the system, which has received state investment and provides more efficiency in registering and titling a vehicle on behalf of a buyer, was available statewide. Dealers would not be required to use webDEALER but would have the option.

**Automated registration and titling system.** SB 604 would include a Sunset recommendation to clarify TxDMV's authority to control access to the registration and titling system (RTS). This clarification would allow the department to adopt rules for the RTS, such as user access, to adhere to best practices and protect against cybersecurity threats. The bill also would allow TxDMV to suspend access to the RTS upon suspicion of fraud, providing greater protections.

**Deceptive advertising enforcement.** SB 604 should not revise the law on prohibited advertising practices. Allowing dealers to cure an advertising violation before imposing a penalty, as allowed under current law, provides an opportunity for the dealer to respond to a warning without being penalized. A dealer would be penalized upon a second occurrence. Motor vehicle advertising is highly regulated, with technical advertising rules that dealers and others must follow, and current practices serve the industry well.

## Critics said

While the Texas Department of Motor Vehicles (TxDMV) should be continued, SB 604 would burden county tax assessor-collectors by requiring counties to follow certain state contracting standards and to use webDEALER and by giving TxDMV sole authority over the automated registration and titling system.

**County contracting requirements.** The bill would require counties to use state standards when contracting with full-service deputies for titling and registration services, which would be unnecessary and burdensome. Counties currently follow state laws governing contracting under the Local Government Code, which is more appropriate than those governing state contracting guidelines. Local contracting decisions should stay at the local level.

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**Online registration system.** The bill should allow, rather than require, county tax assessor-collectors to make available to motor vehicle dealers the webDEALER electronic system designed by TxDMV to permit a dealer to submit a title and registration application online. Tax assessor-collectors should determine whether to approve dealers based on information such as the dealer's volume, ability, and experience. Without this discretion, there is potential for fraud or abuse of the system. The webDEALER system is not in demand in all counties, and compliance would be costly.

**Automated registration and titling system.** Rather than giving TxDMV sole authority to determine access to the registration and titling system (RTS), the bill should include county tax assessor-collectors within that system authority, establishing a process to jointly determine access and revocation of access to RTS.

**Deceptive advertising enforcement.** SB 604 should include a Sunset recommendation allowing TxDMV to better enforce regulations meant to prevent deceptive or misleading motor vehicle advertisements in the state. Under current law, a motor vehicle licensee could violate advertising rules without being subject to an enforcement action beyond a warning and opportunity to cure the violation. Sunset's recommendation was to remove the statutory requirement that TxDMV allow a licensee to cure each type of advertising violation once before assessing a penalty. If the bill included this recommendation, TxDMV could better enforce advertising violations.

## **Other critics said**

SB 604 improperly would continue the Texas Department of Motor Vehicles (TxDMV), which is inefficient and dominated by the industry it purports to regulate. TxDMV's functions should be transferred back to the Texas Department of Transportation or related agencies.

## **Notes**

The HRO analysis of SB 604 appeared in Part One of the May 14 *Daily Floor Report*.



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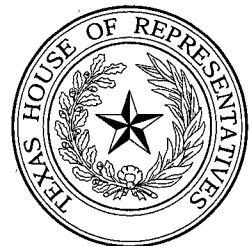
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