HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • http://www.hro.house.state.tx.us

HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, April 13, 2011
82nd Legislature, Number 55
The House convenes at 9 a.m.

Eight bills have been set on the daily calendar for second-reading consideration today:

Bill Callegari
Chairman
82(R) – 55

SUBJECT: Revising standards for use of eminent domain power

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 9 ayes — Oliveira, Kleinschmidt, Anchia, R. Anderson, Brown, Garza, Kolkhorst, Lavender, Margo

0 nays

SENATE VOTE: On final passage, February 9 — 31–0

WITNESSES: For — Kirby Brown, Texas Wildlife Association; Lee Christie, Tarrant Regional Water District; Richard Cortese, Texas Farm Bureau; Ron Kerr, Gas Processors Association; James Mann, Texas Pipeline Association; George Nachtigall, Harris County (*Registered, but did not testify:* Kathy Barber, National Federal of Independent Businesses; Steve Bresnen, North Harris County Regional Water Authority; Robert Doggett, Texas Housing Justice League; Tommy Engelke, Texas Agricultural Cooperative Council; John W. Fainter, Jr, Association of Electric Companies of Texas, Inc.; Marida Favia del Core Borromeo, Exotic Wildlife Association; Jimmy Gaines, Texas Landowners Council; Luis Gonzalez, Texas Self Storage Association; Carlos Higgins, Texas Silver Haired Legislature; Robert Howard, South Texans' Property Rights Association; Mark Lehman, Texas Association of Realtors; David Mintz, Texas Apartment Association; Scott Norman, Texas Association of Builders; Patrick Nugent, Texas Pipeline Association; David Oefinger, Texas Pest Management Association, Inc.; Jim Reaves, Texas Nursery and Landscape Association; Steve Salmon, Texas Riverside and Land Owners Coalition; Steve Salmon, Texas Sheep and Goat Raisers Association; Jason Skagos, Texas and Southwestern Cattle Raisers Association; Ed Small, Texas Forestry Association, City of Lufkin; Robert Strauser, Port of Houston Authority, Texas Ports Association; Bob Turner, Texas Poultry Federation and Texas Sheep and Goat Raisers Association; Josh Winegarner, Texas Cattle Feeders Association; Eric Wright, Northeast Texas Water Coalition)

Against — Frank Turner, City of Plano; Ryan Rittenhouse, Public Citizen, Inc.; Debra Medina, We Texans; Steve Hodges, Norbert Hart, and Eric Friedland, City of San Antonio; Terri Hall, Texans Uniting for Reform

and Freedom; Paul Barkhurst; Don Dixon (*Registered, but did not testify:* Barry Henson, Margaret Henson, Darrel Mulloy, Marilyn Mulloy)

On — Ted Gorski, Jr., City of Fort Worth; Scott Houston, Texas Municipal League; Bill Peacock, Texas Public Policy Foundation; Amadeo Saenz, Texas Department of Transportation

BACKGROUND:

The Fifth Amendment to the U.S. Constitution prohibits the taking of private property for public use without just compensation and is commonly referred to as the "takings clause." In June 2005, the U.S. Supreme Court ruled in *Kelo v. City of New London*, 545 U.S. 469 (2005), that the proposed use of property by the city of New London, Conn. for a private economic development project qualified as a "public use" within the meaning of the U.S. Constitution's takings clause.

Following the *Kelo* decision, the 79th Texas Legislature, in its second called session in 2005, enacted SB 7 by Janek, which prohibits governmental or private entities from using the power of eminent domain to take private property if the taking:

- confers a private benefit on a particular private party through the use of the property;
- is for a public use that merely is a pretext to confer a private benefit on a particular private party; or
- is for economic development purposes, unless economic development is a secondary purpose that results from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas.

The 80th Legislature in 2007 enacted HB 2006 by Woolley, which would have modified eminent domain processes. The bill was vetoed by the governor, who cited potentially higher costs to governmental entities from requiring compensation to landowners for diminished access to roadways and for factors such as changes in traffic patterns and road visibility.

In November 2009, voters approved Proposition 11 (HJR 14 by Corte), which amended Texas Constitution, Art. 1, sec. 17 to restrict taking property to the purpose of ownership, use, and enjoyment by the state, a local government, or the public at large or by an entity given the authority of eminent domain under the law or for the elimination of urban blight on

a particular parcel. The amendment did not include as a public use the taking of property for transfer to a private entity for the primary purpose of economic development or enhancement of tax revenues.

Property Code, ch. 21, subch. C establishes the legitimate bases for assessing damages to a property owner resulting from a condemnation. For this determination, special commissioners are instructed to admit evidence on the value of the property being condemned, the injury to the property owner, the impact on the property owner's remaining property, and the use for which the property was condemned.

Property Code, ch. 21, subch. E provides an opportunity for property owners to repurchase land taken through eminent domain for a public use that was canceled before the 10th anniversary of the date of acquisition. The possessing governmental entity is required to offer to sell the property to the previous owner or the owner's heirs for the fair market value of the property at the time the public use was canceled. The repurchase provision does not apply to right of way held by municipalities, counties, or the Texas Department of Transportation (TxDOT).

DIGEST:

CSSB 18 would modify processes and requirements governing eminent domain, including evidence to be considered by special commissioners in making decisions on damages awards, the rights of property owners to repurchase taken property, the requirement of a bona fide offer to purchase property, and landowners' right to access information from an entity taking their property.

CSSB 18 would add a statutory prohibition against a government or private entity taking land that was not for a public use. The bill would require governmental entities to pay relocation expenses for displaced property owners and provide a relocation advisory service.

Assessments and damages. Special commissioners, in assessing actual damages to a property owner from a condemnation, would have to take into account a material impairment of direct access on or off the remaining property that affected the market value of the remaining property, but they could not consider circuity of travel and diversion of traffic that were common to many properties.

If special commissioners awarded damages to a property owner for a taking that were greater than 110 percent of the original damages the

condemning entity offered to pay before the proceedings, the property owner would be entitled to attorney's fees and other fees in addition to costs in current law.

A condemning entity and a property owner in a trial to assess damages caused by the taking could each strike one of three special commissioners appointed by a judge. A judge would replace any stricken commissioners. The special commissioners would have to wait at least 20 days after being appointed to schedule a hearing.

Determinations of fair value of the state's interest in access rights to a highway right-of-way would be the same as standards used by the Texas Transportation Commission in acquiring access rights under provisions governing acquisition of property and payment of damages related to access.

Right of repurchase. An owner of property taken through eminent domain could repurchase the property from any entity at the original price paid to the owner if the public use for which the property was taken was canceled before the property was used for that purpose or if, within 10 years after the taking, the property became unnecessary for the public use for which it was acquired or no "actual progress" was made toward the public use. "Actual progress" would be defined as completing two or more of the following actions on the property or another property taken for the same public use:

- performing significant labor to develop the property;
- acquiring significant materials to develop the property;
- contracting significant work from an architect or similar professional;
- applying for state or federal funds to develop the property;
- applying for a state or federal permit to develop the property;
- acquiring an adjacent property for the same public use that prompted the taking of the original property; and
- for a governmental entity, the adoption of a development plan indicating the entity would not complete more than one action before the 10th anniversary of taking the property.

Suits over the right of repurchase could be settled in a district court. The bill would establish procedures for providing notice to property owners informing them of their right to repurchase and allowing former owners to

request a determination of whether they were entitled to repurchase the property if sufficient progress were not made at least 10 years after a taking.

The right of repurchase would expire after one year if an entity made a good faith effort to locate a property owner and did not receive a response.

Bona fide offer. The bill would require an entity with eminent domain authority to make a bona fide offer to acquire property from an owner voluntarily. Under the bill, an entity with eminent domain authority would have made a bona fide offer if:

- an initial and final offer were made in writing to a property owner;
- a final offer was made in writing at least 30 days after the initial offer;
- the entity, before making a final offer, obtained an appraisal from a certified appraiser of the value of the property being taken and any damages to any remaining property;
- the final offer was equal to or greater than the amount of the written appraisal obtained by the entity;
- the entity provided a copy of the written appraisal, a copy of the deed or other instrument conveying the sought-after property, and the Texas landowner's bill of rights document; and
- the entity provided the property owner with at least 14 days to respond to the final offer and the property owner did not agree to the terms of the final offer within that time.

The entity would have to include a statement affirming that it made a bona fide offer in a petition to take a property. If a court hearing a suit determined that a condemning authority did not make a bona fide offer, the court would abate the suit, require the entity to make a bona fide offer, and order the condemning entity to pay costs currently authorized in law and reasonable attorney's fees incurred by the property owner directly related to the failure to make a bona fide offer.

Eminent domain process. CSSB 18 would require a governmental entity to approve the use of eminent domain at a public meeting by a record vote. It also would establish procedures for voting on specific properties and groups of properties.

The bill would expand disclosure requirements to include all entities with the power of eminent domain instead of only governments. An entity could not include a confidentiality provision in an offer or agreement to take property. The entity would have to inform a property owner of his or her right to discuss the offer with others or to keep the offer confidential. An offer to purchase or lease a property would have to be sent by certified mail and would have to include any appraisal reports acquired in the preceding 10 years.

An entity wishing to condemn a property for a pipeline would have to provide notice to the relevant county commissioners court before beginning negotiations with the property owner.

The bill would require that an entity authorized to take property, but not subject to open records laws, produce information related to the taking at the property owner's request. It would repeal Government Code, sec. 552.0037, which subjects non-governmental entities with eminent domain authority to open records laws, and Property Code, sec. 21.024, which requires critical infrastructure entities with eminent domain authority to produce certain information relating to a condemnation to the owner of the property.

General provisions. Entities that were created or that acquired the power of eminent domain before December 31, 2012, would have to submit a letter to the comptroller acknowledging that the entity was authorized by the state to exercise the power of eminent domain and identifying the legal source for that authority. An entity that did not submit a letter by September 1, 2013, would have its authority to exercise eminent domain suspended until it submitted the letter. The comptroller would submit to state leaders a report with the name of each entity that submitted a letter and a corresponding list of provisions granting the identified authority.

A property owner whose property was taken for an easement for a gas or oil pipeline could construct a road at any location above the easement. The road would have to be perpendicular to the easement, and it could not be more than 40 feet wide or interfere with the operation and maintenance of a pipeline.

The bill would prohibit certain medical centers established in Vernon's Texas Civil Statutes, Art. 3183b-1, from exercising the power of eminent domain to take single-family residential properties and multi-family

residential properties with fewer than nine units. It would also prohibit a municipal utility district from taking property for a site or easement for a road outside of its boundaries.

The changes made to hospital districts, municipal utility districts, and standards for determining fair value of highway right-of-way would apply only to condemnation proceedings filed on or after the bill's effective date.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

CSSB 18 would provide a balance between protections for private property owners and the needs of taxpayers generally. Texas was among the fastest-growing states in the union in the last decade, according to the 2010 U.S. Census. Such strong growth creates many new public needs, such as schools, roads, and utilities, that often can be built only by taking property through eminent domain authority. While the vast majority of land is acquired without the need for eminent domain, it is important to protect those owners that refuse an initial offer to purchase their land. CSSB 18 would establish these protections without imposing unacceptable costs on Texas taxpayers.

The bill would add fairness to state statutes governing the right of repurchase, expand the range of damages that could be considered in eminent domain proceedings to ensure just compensation to property owners subject to condemnation, and protect property owners in a variety of other respects where they have proven vulnerable.

Uses of eminent domain. CSSB 18 is the culmination of years of hard work on behalf of a wide range of parties to forge a consensus on eminent domain reform. The bill would be a clear improvement over current law and would address most of the lingering concerns about the use of eminent domain authority.

The bill would retain language authorizing the use of eminent domain for "public purposes" that could have unintended consequences if changed. It would add to the statutes a requirement similar to one added to the Texas Constitution in 2009 that land be taken only for a public use. The public use language in the bill would help protect property owners against abuse without going too far and requiring that land be taken only for a "necessary" use. Adding a requirement that all takings be necessary could create substantial legal confusion and put condemning authorities in the

position of having to defend the necessity of each use of eminent domain authority in a court. This would be a major cost to taxpayers, encouraging excessive litigation and potentially tying up critical public projects, neither of which Texans can afford. Adding the term "necessary" to the public use requirement would not resolve any clear and current example of eminent domain abuse in the state.

Damages and assessments. Expanding to a reasonable extent the range of plausible damages that could be awarded to property owners is necessary to ensuring just compensation for those subject to condemnation. CSSB 18 would do this by allowing special commissioners, who are appointed to determine adequate awards for property owners, to consider a "material impairment of direct access" to a property. This would expand the current practice of allowing special commissioners to consider only "material and substantial" impairments to access to a property. Eliminating the term "substantial" would require special commissioners to award damages for impaired access to a property, such as eliminating one entrance and exit to and from a parking lot that has other entrances and exits. Current legal practice does not allow special commissioners to consider these types of damages, although they often have a clear market value. The bill would provide a good balance because it is careful not to open the floodgates to the litigation that could follow a further expansion of permissible damages.

One issue often raised is that providing property owners with a broader range of damages could lead to higher costs for condemning authorities. Current statutes and the nature of the relationship between property owners and the powerful entities with eminent domain authority, however, have created an imbalance against the property owner, who often has little recourse and must go to great lengths just to receive a tolerable, let alone just, offer.

Expanding the range of damages would help restore balance by leading to more reasonable judgments in court and sending a message to condemning entities to consider the expanded range of damages in crafting their initial offers. Expanding legitimate damages would encourage condemning authorities to make fair offers up front to avoid the possibility of paying a higher sum on appeal of the initial offer. This could save money for a condemning authority in the long-run.

The bill also would require an entity to provide relocation costs — a benefit current law makes optional — in an amount sufficient to cover expenses related to relocation. This would offset some of the difficulty and grief people endure when being displaced from their homes or businesses without introducing the problematic and costly concept of ensuring a property owner a comparable standard of living.

Right of repurchase. CSSB 18 would provide for the repurchase of condemned property at the price the entity paid at the time of acquisition. This change would implement authority granted by Art. 3, sec. 52j of the Texas Constitution, which was added in 2007 when Texas voters approved Proposition 7 (HJR 30 by Jackson). Allowing the repurchase price to be set at the original sale value, and not the current fair market value as currently required in the Property Code, would enable property owners to reclaim equity for appreciating property to which they were entitled. Only property owners subject to takings that wrongfully result in cancelled, absent, or unnecessary public uses would be eligible for restitution.

CSSB 18 would curtail speculative condemnations and establish an important safeguard against the excessive and reckless use of eminent domain authority. The bill would not confer any special advantage on an individual because it would allow the redress only of a taking that was not justly executed. It would create a strong disincentive against the speculative use of eminent domain by condemning authorities, including schools, municipal and county governments, state agencies, pipelines, and utilities. Condemning authorities would be discouraged from acquiring land through eminent domain for which there were no immediate plans. Takings completed on a speculative basis deprive current owners of the future value of their property.

Bona fide offers. CSSB 18 would install clear requirements for initial offers to purchase property before an entity initiated eminent domain proceedings. The bill would require specific processes, including adhering to timelines and providing relevant appraisals and other information, and it would prohibit confidentiality agreements. If a condemning entity did not meet the requirements in the bill, the entity would have to pay court costs and other costs the property owner assumed in contesting the action.

The strongest encouragement for a fair offer in the bill would be the potential that a condemning entity would have to pay attorney’s fees and other court costs if its initial offer were 10 percent less than a property

owner's final award as granted by special commissioners or a court. This would be a deterrent against making a low initial offer. A property owner would be more likely to contest an unfair offer in court if he or she could possibly recover court costs.

OPPONENTS SAY:

CSSB 18 would impose additional costs on Texas taxpayers for the legitimate exercise of eminent domain authority. Two areas in the bill would directly and substantially increase the costs of condemnation for a legitimate public use, translating in many cases to a greater cost to taxpayers. These additional costs are unnecessary because the Legislature and the voters have in recent sessions approved measures to thwart the main sources of eminent domain abuse.

The bill would expand damages that special commissioners consider when deciding on an award to include a "material" but not "substantial" impairment of direct access to a property. This would add costs to takings for transportation projects for TxDOT, mobility authorities, and local governments. TxDOT estimates this provision could have an impact of $10 million in fiscal 2012. The total impact statewide would certainly be greater. The provision also could have unintended consequences if courts were more permissive than expected in allowing for damages that were "material impairments."

CSSB 18 would allow a court to award attorney's fees to a property owner if an ultimate award were 110 percent of the initial offer made by a condemning authority. TxDOT estimates this could cost about $7 million in fiscal 2012. This requirement also would affect other entities that use eminent domain, including universities, due to additional court costs and the incentive to inflate initial offers to avoid paying court costs at the end.

Other provisions in the bill also would increase the costs to Texas taxpayers. Some institutions that do not currently pay relocation costs would have to begin doing so. An entity that had to resell a property to an original owner would lose any increased value that accrued in the property. While the costs of these provisions cannot be estimated, they are likely to add up over time and could be significant in the long term.

OTHER OPPONENTS SAY:

CSSB 18 would fall short of the eminent domain reform Texans need and deserve. The bill would not require a taking to be a "necessary" public use. It would not address enduring abuses of slum and blight powers to take property. Provisions for expanding the right of repurchase and requiring a

bona fide offer should be stronger. The bill should expand further the evidence commissioners must consider when awarding damages to a property owner to include financial damages associated with relocating to another property and maintaining a comparable standard of living or business.

Uses of eminent domain. Not restricting property takings to a "necessary" public use would be a major shortcoming of the bill. The Texas Constitution already requires that property takings be made for a public use, but it does not require that each taking be necessary to accomplish that public use. Requiring that a taking be necessary would force condemning entities to defend the taking as essential to a particular project. This would help rebalance the power relationship between condemning entities and property owners. Current law provides no firm legal ground to challenge the legitimacy of a property taking. Adding the "necessary" provision could provide a basis for a property owner to challenge a property taking in conspicuous cases of abuse.

The bill also would retain the authorization to use eminent domain for a "public purpose" instead of a public use. The confusion between "use"— which is specific to carrying out an actual government function on a property — and "purpose" — which invokes a broader role of government in promoting common goods — has allowed many abuses of eminent domain in the past. The bill should be amended to strike references to public purpose and replace them with public use.

Slum and blight. CSSB 18 would not address a nagging vulnerability with regard to eminent domain power left unaddressed by SB 7 in 2005 — exceptions for areas designated as blighted or as slums. Under current statutory provisions, municipalities may take property for economic development purposes if the taking is a secondary purpose resulting from community development or urban renewal activities to eliminate existing harm on society from slums or blighted areas.

Existing statutory definitions of slum and blight are vague at best, leaving it to the judgment of municipal officials to decipher what constitutes hazardous conditions, greater welfare, and social and economic liabilities. The current statutory definition of blight would allow a taking in cases where a property's defect was minor, such as deteriorating improvements, or was not caused by the property owner, such as inadequate infrastructure. A lack of safeguards for property owners in potentially

blighted areas has given rise to a number of abusive and reckless eminent domain practices.

Municipalities can use the blight exception to condemn properties on questionable premises. CSSB 18 should be amended to reform the definition of blight and the use of eminent domain on blighted properties and should remove all references to "slums" in statute.

Right of repurchase. The bill would actually weaken the right of repurchase in current law. Current law triggers the right of repurchase if a governmental entity cancels a public use on a parcel. The proposed bill would leave a loophole for local governments, which could enact resolutions to meet only one of the seven conditions necessary to satisfy "actual progress" in the bill. Many of the conditions necessary to achieve "actual progress" are so loosely worded that most entities could satisfy the requirements with minimal effort. The bill should be amended to tighten the "actual progress" conditions to ensure that an entity had taken real steps toward a public use.

Another related weakness of the right of repurchase provision in the bill is that it would do nothing to prevent an entity from taking a property and using it for a purpose unrelated to the original taking. This would allow speculative practices among condemning entities who may have a provisional, malleable plan in place for development. To curb this possibility, the bill should be amended to add a "fourth trigger" that would activate the repurchase provision if the eventual use of the property was not the original use for which it was taken.

Bona fide offers. The bill's provisions for bona fide offers would not adequately protect property owners. Language in HB 2006, enacted by the 80th Legislature and vetoed by the governor, would have broadly required a condemning authority to make a good faith offer. Language from that bill was permissive to allow the matter to be defined through court proceedings. CSSB 18 would provide specific conditions that, if met, would constitute a bona fide offer. The conditions in the bill are focused on small procedural matters and in large measure reflect current practices, which have proven decidedly to favor condemning entities over property owners. Bona fide offer provisions in the bill likely would compel condemning entities to minimally satisfy the provisions on paper but would not guarantee a more fair process for property owners.

The sanctions for an entity that a court determined did not operate in good faith by making a bona fide offer should be strengthened. The bill should be amended to require that a court dismiss an action for an entity that did not make a bona fide offer and prohibit that entity from filing another petition to condemn that specific property for a specified period.

NOTES:

The Legislative Budget Board (LBB) estimates the bill would have an uncertain fiscal impact to the state due to the case-by-case nature of the requirements of future condemnation proceedings. The LBB anticipates the bill would result in increased costs to acquire property through condemnation proceedings, specifically those related to highway right-of-way projects and actions by institutions of higher education.

The House committee substitute added provisions to the engrossed Senate bill that would :

- entitle property owners to attorney's fees and other fees if a final award was 110 percent of the original offer from a condemning entity;
- require pipelines with the power of eminent domain to notify a county commissioners court before beginning negotiations with a property owner;
- set an expiration on the right of repurchase after one year if an entity made a good faith effort to locate a property owner and did not receive a response; and
- limit the condemnation authority of certain hospital districts.

SB 18 by Estes, which passed the Senate, but died in the House during the 2009 regular session of the 81st Legislature, would have modified processes and requirements governing eminent domain, standards of evidence considered by special commissioners in making decisions on damages, obligations of condemning entities, and the rights of previous owners to repurchase taken property.

SUBJECT: Revising higher education limits on dropped courses and excess hours

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 7 ayes — Branch, Bonnen, Brown, D. Howard, Johnson, Lewis, Patrick

0 nays

2 absent — Castro, Alonzo

WITNESSES: For — (*Registered, but did not testify*: Rey Garcia, Texas Association of Community Colleges)

Against — None

BACKGROUND: Education Code, sec. 51.907 limits the number of courses an undergraduate student can drop at a higher education institution without incurring an academic penalty while remaining enrolled. Institutions may not permit a student to drop more than six courses, including any course a transfer student has dropped at another institution. An institution may permit a student to drop more than the maximum if the student shows good cause, such as a severe illness or the death of a family member.

Education Code, sec. 61.0595 limits state funding for higher education institutions for certain excess undergraduate semester-credit hours. Undergraduate students are limited to the minimum number of semester-credit hours required for graduation with a bachelor's degree in their particular degree plan, plus 30 semester-credit hours beyond their specific degree plan. If a student exceeds the semester-hours limit, the institution is not reimbursed through the formula funding system. Current law allows public colleges and universities to charge students who earn course credits exceeding the 30-hour limit with additional tuition, but it cannot be higher than the tuition rate for nonresident students.

Some exemptions for courses that count toward the 30-hour cap include semester-credit hours during previous completion of a baccalaureate degree, during an examination, or for remedial education courses.

DIGEST:

HB 992 would prohibit a general academic teaching institution from counting a class dropped during enrollment at a public junior college toward the six-drop limit if the student was transferring to the academic institution after earning at least 30 semester-credit hours or an associate degree. Higher education institutions would have to provide written notice of these provisions to each undergraduate student before the end of each student's first semester. This change would apply beginning with the fall 2011 semester.

HB 992 also would exempt the semester-credit hours earned by a student before receiving an associate degree from being counted in determining whether the student had exceeded the 30-hour limit on previous semester-credit hours. This change would apply beginning with the 2013-2014 academic year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS SAY:

HB 992 is a student-centered bill that would aid students in transferring from a community college to a university. It would align state higher education policy with the goals of the state's higher education plan, *Closing the Gaps*, by encouraging students to attain an associate degree and to continue to strive for higher education.

Current law was intended to encourage students to graduate in a timely manner and limit state support for excessive credit hours. These policies sometimes had an unintended and negative impact on students' success and completion rates. Community college students are unfairly penalized because the six-drop rule can be a real barrier to attaining a higher education degree.

The Texas Higher Education Coordinating Board has recommended that the Legislature amend the formula funding model for higher education institutions and adopt outcomes-based formula funding. Formula funding would be based partly on outputs rather than enrollments. The outcome-based model proposed for community colleges would include "momentum points," whereby institutions would receive points for milestones completed by their students, such as completion of development education or 30 semester-credit hours, transfer to a four-year university, or total number of associate degrees and certificates earned. The provisions of HB

992 would be in line with the proposed outcomes-based funding for community colleges.

Not all students who drop classes are "slackers." Many are highly motivated individuals. Freshmen do not always make the right decisions regarding major fields of study, and they often require time to find the right subject area. These and other students who have had to drop classes because of having to work or for family reasons would have a clean slate once they enrolled in a university. The bill would create an incentive for students who made the commitment to earn 30 semester-credit hours or obtain an associate degree by rewarding them for it. These students have proven that they are not wasting their time and are a good investment of the state's money, but the current six-drop policy can hinder their efforts to further their education.

Current law allows for an exemption from the excess hours rule for students who have earned a baccalaureate degree, and the same exemption should be extended to students who have earned an associate degree.

Current law also does not require institutions to inform students of the six-drop rule, and students need to be made aware of their responsibility to abide by this policy.

The bill also would address the cumbersome process involved in universities having to track a student's dropped classes from previous community college enrollment. Under HB 992, a university no longer would have to perform a community college transcription evaluation to abide by the six-drop rule.

OPPONENTS SAY:

This bill would create an imbalance by allowing two-year students to have a significant advantage over their four-year university peers. HB 992 would allow students who began their higher education at a community college, earned 30 semester-credit hours or completed an associate degree, and then transferred to a university essentially to restart their academic careers. Current law limits the number of times that a student can drop a course and treats all undergraduate students equally, regardless of their initial enrollment at a community college or university. The intent of current law is to encourage deliberate, responsible academic planning among all undergraduate students, regardless of whether they have attended a community college or university. The goal is to push students to complete the courses for which they have registered.

NOTES:

According to the bill's fiscal note, there would not be a significant cost to the state.

During the 2009 regular session, the 81st Legislature approved a similar bill, SB 1343 by Hinojosa, which was vetoed by the governor.

SUBJECT: Increased minimum liability insurance coverage for DWI offenders

COMMITTEE: Insurance — favorable, without amendment

VOTE: 8 ayes — Smithee, Eiland, Hancock, Nash, Sheets, L. Taylor, Vo, Walle

0 nays

1 absent — Torres

WITNESSES: For — (*Registered, but did not testify:* Bill Lewis, Mothers Against Drunk Driving; Ware Wendell, Texas Watch)

Against — None

On — (*Registered, but did not testify:* Leslie Hurley, Texas Department of Insurance)

BACKGROUND: Transportation Code, ch. 601 outlines the Texas Motor Vehicle Safety Responsibility Act. Sec. 601.072 specifies the minimum amounts of coverage Texas drivers are obligated to maintain to establish financial responsibility, which currently are:

- $30,000 for bodily injury to or death of one person in one accident;
- $60,000 for bodily injury to or death of two or more persons in one accident, subject to the $30,000 amount for bodily injury to or death of one of the persons; and
- $25,000 for damage to or destruction of property of others in one accident.

DIGEST: HB 1020 would require persons convicted of offenses related to driving while intoxicated (DWI) to maintain auto insurance coverage additional to the minimum currently required by state law. The required liability coverage amounts would increase by $25,000 for each conviction.

The bill would be effective September 1, 2011, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY:

Since DWI offenders have identified themselves as high-risk insurance consumers, HB 1020 would ensure that they maintained adequate financial responsibility to cover damages if they committed the offense again and caused a collision with another driver. The bill would aid insurance companies in appropriately allocating costs of risk among consumers. HB 1020 also would assist innocent drivers by offsetting costs incurred when involved in an auto accident with a repeat DWI offender.

The bill would effectively deter repeat criminal behavior. According to the Texas Department of Transportation (TxDOT), about half of DWI defendants have previously committed the offense. The department also reports that repeat DWI offenders present a higher risk than drivers who have never been convicted because the offenders are more likely to be involved in a fatal accident. Since the bill would make it more difficult for DWI offenders to obtain auto insurance coverage, it would prevent them from operating vehicles without the required amount of financial responsibility. If those who have been identified as more likely to drive while intoxicated were hindered from committing another offense, then the bill would have accomplished part of its purpose. The likelihood that it would increase the number of uninsured drivers is minimal.

HB 1020 would not make auto insurance coverage unavailable to repeat DWI offenders. For a higher premium, numerous insurers in Texas would provide coverage to repeat DWI offenders. Additionally, the Texas Automobile Insurance Plan Association, authorized by statute, would work with twice-rejected consumers to obtain minimum auto insurance coverage required by state law. The association would assist people who were unable to obtain insurance on their own. When a market for a certain product presents itself, companies work to meet the need.

HB 1020 would allow Texas to join other states that have held drivers who operated cars under the influence of alcohol to a higher standard of financial responsibility in light of their high-risk behavior. For example, Florida has enacted similar legislation for these offenders. Florida law increases the minimum auto coverage from $10,000 for personal injury protection and $10,000 for property damage liability for drivers with clean records to at least $100,000 for injury or death to one person, $300,000 per accident, and $50,000 for property damage liability for DWI offenders. Although it would use an alternate method of gradual coverage increase, this bill would similarly increase minimum required coverage for DWI offenders.

OPPONENTS SAY:

HB 1020 could make it too difficult for DWI offenders, who already have difficulty obtaining auto insurance coverage, to obtain auto coverage under the higher minimum requirements. Since DWI offenders already are subject to higher auto insurance premiums, maintaining or obtaining coverage could quickly become cost prohibitive for these consumers. Also, the financial benefits of the bill for accident victims would be minimal because the $25,000 additional coverage required for repeat convictions could be relatively small in relation to costs incurred from an auto accident.

HB 1020 would do little to change the behavior of DWI offenders. The bill would not be an effective deterrent because the inability to obtain auto insurance coverage does not prevent people from driving. According to TxDOT, approximately 20 percent of Texas automobiles are not covered by insurance at any point in time. If the cost or availability of auto insurance prevented offenders from obtaining coverage, it would simply encourage more offenders to drive uninsured. The public would be more at risk of having collisions with uninsured motorists. Essentially, HB 1020 would be another way for auto insurers to charge more money for products targeted toward higher-risk consumers.

The bill would be unfair and excessively punitive for DWI offenders. Since the bill would not limit the length of time that an offender would have to maintain the additional coverage, these persons would be punished indefinitely for past offenses. Insurance companies are allowed to charge DWI offenders higher premiums for approximately three years after a conviction. Similarly, under the Texas Driver Responsibility Program, governed by the Transportation Code, DWI offenders generally have to pay an annual surcharge of $1,000 for only three years. Since it would not specifically limit the additional financial burden placed on DWI offenders, HB 1020 would not treat these persons consistently under Texas law.

SUBJECT: Revising management of groundwater production

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Ritter, T. King, Beck, Creighton, Hopson, Keffer, Larson, Lucio, D. Miller, Price

0 nays

1 absent — Martinez Fischer

WITNESSES: For — Dean Robbins, Texas Water Conservation Association; Brian Sledge, numerous groundwater conservation districts; Gregory Ellis; (*Registered, but did not testify:* Luana Buckner, Texas Water Conservation Association and Medina County Groundwater Conservation District; Jim Conkwright, High Plains Underground Water Conservation District No. 1; Mike Barnett, Texas Association of Realtors; Harvey Everheart, Mesa Underground Water Conservation District; Steve Kosub, San Antonio Water System; C.E. Williams, Panhandle Groundwater Conservation District; Monty Winn, Texas Municipal League; John Burke)

Against — Steve Box, Environmental Stewardship

On — (*Registered, but did not testify:* Robert Mace, Texas Water Development Board)

BACKGROUND: Water Code, sec. 36.108 requires that groundwater conservation districts establish desired future conditions for the relevant aquifers within their groundwater management areas through joint planning. "Desired future conditions" are the desired, quantified condition of groundwater resources, such as water levels, water quality, spring flows, or volumes, at a specified time or times in the future or in the water planning horizon.

Under the Water Code, after a desired future condition is established for an aquifer, the Texas Water Development Board (TWDB) is required to model that desired future condition and submit the managed available groundwater — which is the amount of water that may be permitted by a district for beneficial use in accordance with the desired future condition of the aquifer — back to the districts for water use permitting decisions

and to the regional water planning groups for use in their water supply plans.

The groundwater conservation districts currently are required to issue permits up to the point that the groundwater permitted equals the managed available groundwater. In general, groundwater used for the exploration of oil and gas, as well as domestic and livestock use is exempted from the permitting process and not statutorily factored into the managed available groundwater.

DIGEST:

CSHB 1824 would require a groundwater conservation district to issue permits up to the point that the total volume of both exempt and permitted groundwater production achieved an applicable desired future condition.

The bill would replace the current term "managed available groundwater" with "modeled available groundwater." Modeled available groundwater would mean the amount of water that TWDB determined could be produced on an average annual basis to achieve a desired future condition.

In issuing permits, the district would be required to manage total groundwater production on a long-term basis to achieve an applicable desired future condition and to consider:

- the modeled available groundwater determined by TWDB;
- TWDB's estimate of groundwater produced under permitting exemptions;
- the amount of groundwater authorized under existing permits;
- a reasonable estimate of groundwater that is actually produced under permits issued by the district; and
- yearly precipitation and production patterns.

TWDB would have to solicit information from each applicable district when estimating exempt use.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

CSHB 1824 would direct groundwater districts to issue permits based upon the total amount of groundwater production from both exempt and permitted production, a much more realistic approach. Groundwater districts currently are required to issue permits up to the amount of managed available groundwater. For this amount to be truly representative

of how much groundwater can be produced while still achieving the desired future condition, a district cannot consider only how much groundwater is produced under permits issued by the district, but also must take into account exempt groundwater use. However, the current concept of managed available groundwater takes into account only how many permits are issued, while the aquifer is affected by how much water is produced.

Clear guidelines are needed for issuing groundwater permits. Current law ties the permitting decision exclusively to whether the permit will exceed the managed available groundwater. Making such decisions based on this inflexible mandate is not realistic for districts trying to accomplish the purpose of the desired future condition. Permitting decisions need to be based upon the impact the permit will have on the ability of the district to achieve the desired future condition. Therefore, permits issued by a groundwater conservation district should focus on the total amount of production in a district, not just how much groundwater is permitted.

The bill also could relieve some pressure from those seeking to litigate the desired future conditions of an aquifer. Under current law, the establishment of desired future conditions is the only time in the permitting process that the permit cap can be argued. Under CSHB 1824, each individual permit application would be evaluated under specific permitting criteria.

OPPONENTS SAY:

Under current law, the managed available groundwater is a cap on the amount of water that can be permitted from an aquifer. Changing the concept of managed available groundwater to modeled available groundwater would remove the hard cap on permits. Removing this cap would result in permits exceeding the amount of managed available groundwater the model says can be supported by the aquifer.

Given the process undertaken by TWDB, the groundwater conservation districts, and the groundwater management areas, managed available groundwater is a fairly definable value. Changing that could produce a gray area that could result in continual modification and debate over those volumes, making it more difficult for districts to enforce any meaningful pumping levels and possibly resulting in increased litigation.

OTHER OPPONENTS SAY:

The permitting criteria set out in CSHB 1824 also should consider the relationship between groundwater and surface water, with special consideration for the impact of groundwater flow into springs and other surface waters as well as the impact on flow in and out of the district between aquifers.

NOTES:

The committee substitute differs from the original by specifying that when a groundwater conservation district was issuing permits, it would be required to manage total groundwater production on a long-term basis. The substitute also included yearly production in addition to yearly precipitation in the factors to be considered in determining the desired future condition.

The companion bill, SB 737 by Hegar, passed the Senate by 31-0 on March 30 and was reported favorably, without amendment, by the House Natural Resources Committee on April 7.

SUBJECT: Allowing a water permit applicant to refer a contested case to SOAH

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Ritter, T. King, Beck, Creighton, Hopson, Keffer, Larson, Lucio, D. Miller, Price

0 nays

1 absent — Martinez Fischer

WITNESSES: For — Steve Kosub, San Antonio Water System; Dean Robbins, Texas Water Conservation Association; Gregory Ellis; (*Registered, but did not testify:* Harvey Everheart, Mesa Underground Water Conservation District; C.E. Williams, Panhandle Groundwater Conservation District; Luana Buckner, Texas Water Conservation Association and Medina County Groundwater Conservation District; Jim Conkwright, High Plains Underground Water Conservation District No. 1; John Burke)

Against — None

BACKGROUND: Under current law, a groundwater district may contract with the State Office of Administrative Hearings (SOAH) to conduct an appeal for decision on a water permit, but is not obligated to do so.

DIGEST: CSHB 1825 would require a groundwater conservation district to contract with SOAH to conduct a hearing if requested by an applicant or other party to a contested case.

CSHB 1825 would require the party requesting the hearing to pay all costs associated with the contract for the hearing and to pay the district a sufficient deposit before the hearing began. The district would have to refund any excess money.

The district board of directors would have the authority to make a final decision after considering the proposal issued by SOAH.

The district could adopt rules for the hearing that were consistent with the procedural rules of SOAH. The district would have to adopt rules to:

- establish a procedure for preliminary and evidentiary hearings;
- allow the presiding officer, at a preliminary hearing by the district and before a referral of the case to SOAH, to determine a party's right to participate in a hearing; and
- set a deadline for a party to file a request to refer a contested case to SOAH.

If the district did not prescribe a deadline by rule, the applicant would have to request the hearing no later than 14 days before the evidentiary hearing. The hearing would have to be held in Travis County or at the district office or the board's regular meeting location. The district would have to choose the location.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011. The bill would apply only to a permit or permit amendment application determined to be complete on or after the effective date.

SUPPORTERS SAY:

CSHB 1825 would require a groundwater conservation district to contract with SOAH to conduct an evidentiary hearing if requested by a permit applicant or any other party to a contested case hearing. This would provide objectivity and balance in the permitting and regulatory process by giving parties an objective, independent hearing examiner.

As the state's population continues to grow and the use of surface water becomes more limited, groundwater permit applications will likely be more frequently contested. CSHB 1825would allow larger, more difficult contested cases to be handled by SOAH, which has experienced, professional hearing examiners who could better handle such cases.

The bill also would provide more consistent evidentiary records for groundwater conservation districts that may not have experience with evidentiary rules and trials. The bill would not place an additional burden on the districts because the party requesting the hearing would be required to pay all costs associated with the SOAH contract. It also would preserve respect for the judgment of a local groundwater conservation district by ensuring that the district board retained the authority to make the final decision regarding the permit or permit amendment application. A SOAH hearing could help the district to make a more informed final decision. Groundwater conservation district personnel have stated that although in

some case it might be unnecessary and costly to contract with SOAH, for the sake of fairness it is important that the option be available to permit applicants or any other party.

OPPONENTS SAY:

The primary objective of a groundwater conservation district is to manage and protect groundwater. Groundwater conservation districts are careful to provide full due process to every permit application. This bill is unnecessary because groundwater conservation districts issue more than 99 percent of their permits without contested case hearings, and they hire a fair and impartial hearing examiner whenever there is a contested case.

Although the bill stipulates that the party requesting the hearing would have to pay all costs associated with the SOAH contract, there are other costs to consider, such as possible travel costs and additional attorneys' fees.

NOTES:

The committee substitute differs from the original by providing that a district "may" rather than "shall" adopt rules for a hearing consistent with those of SOAH. The substitute also would require a request for a hearing before SOAH no later than 14 days before the evidentiary hearing if the district did not prescribe a deadline by rule, whereas the original bill would require a district to contract with SOAH no later than 14 days before the hearing if the district did not prescribe a deadline by rule.

The companion bill, SB 693 by Estes, passed the Senate by 31-0 on April 7 and has been received by the House.

SUBJECT: Changing start of 60-day notice to post signs for TABC applications

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 8 ayes — Hamilton, Quintanilla, Driver, Geren, Gutierrez, Harless, Kuempel, Menendez

0 nays

1 absent — Thompson

WITNESSES: For — *(Registered, but did not testify*: Glen Gary, Texas Restaurant Association; Ralph Townes, Licensed Beverage Distributors)

Against — None

On — *(Registered, but did not testify*: Sherry Cook, Texas Alcoholic Beverage Commission (TABC))

BACKGROUND: In 1999, the 76th Legislature enacted HB 3598 by McClendon, which amended the Alcoholic Beverage Code to require posting a prominent outdoor sign to announce a pending permit or license for on-premises consumption of alcoholic beverages at a location that did not previously have such a permit or license. The sign must include the type of permit or license being sought and the name and business address of the applicant. It must be posted for at least 60 days before the application for the permit or license is filed.

DIGEST: HB 1953 would amend the Alcoholic Beverage Code to require posting of an outdoor sign stating that alcoholic beverages were intended to be served at least 60 days before a TABC permit or license was issued, rather than filed, for the on-premises consumption of alcoholic beverages at a location that previously did not have such a permit or license.

The bill would take effect on September 1, 2011, and would apply only to applications filed on or after the effective date.

SUPPORTERS SAY:

HB 1953 would reflect streamlining in TABC procedures since a law was enacted in 1999 that required the posting of an outdoor sign announcing a pending permit or license for on-premises consumption of alcoholic beverages. A drafting error in the original legislation made the 60-day period begin when the application was *filed*, rather than when TABC *issued* the permit. Current interpretation of the law is that the notice period begins four or five days after the application is received at a TABC district office so that the information can be forwarded to TABC headquarters in Austin. However, administrative changes in processing applications have made it possible to file the application at both the TABC district and state offices simultaneously. Even with the technological improvements, the standard remains to wait 60 days before processing the application, and the actual issuing of the permit can be further delayed beyond the waiting period.

Seeking a permit is a complicated, and even experienced applicants could encounter additional review because of errors or incomplete applications. HB 1953 would help remedy this situation by creating a clearer standard for both applicants and TABC administrators to follow.

HB 1953 would not change the current 60-day notice period and would allow the same timeline for neighbors and nearby property owners to request a TABC hearing on the proposed application for a bar or restaurant seeking an on-premises alcoholic beverage permit or license.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Sovereign immunity under the Uniform Declaratory Judgments Act

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 11 ayes — Jackson, Lewis, Bohac, Castro, S. Davis, Hartnett, Madden, Raymond, Scott, Thompson, Woolley

0 nays

WITNESSES: For — (*Registered, but did not testify:* Darrin Hall, City of Houston - Mayor Annise Parker)

Against — (*Registered, but did not testify:* Rick Levy, Texas AFL-CIO; Ted Melina Raab, Texas American Federation of Teachers; Derrick Osobase, Texas State Employees Union)

On — Sean Jordan, Office of the Attorney General of Texas

BACKGROUND: A declaratory judgment establishes the rights of parties without providing for or ordering enforcement. It may be used, for example, for a court determination of which statute prevails when two statutes conflict. In Texas, declaratory judgments are governed by the Uniform Declaratory Judgments Act (UDJA). The UDJA allows a court to award costs and reasonable and necessary attorney's fees.

The Supreme Court of Texas has held that sovereign immunity is waived under the UDJA. Sovereign immunity is a government's immunity from being sued in its own courts without its consent. The Supreme Court also has indicated that the UDJA requires governmental entities to be joined in suits to construe statutes.

DIGEST: HB 2294 would add a provision to the Uniform Declaratory Judgments Act (UDJA) stating that the UDJA did not waive sovereign immunity.

The bill would take effect on September 1, 2011.

SUPPORTERS SAY:

HB 2294 would ensure that the state of Texas was not responsible for defending suits seeking an interpretation of a state statute and would not be responsible for paying attorney's fees in those cases. Suits seeking an interpretation of a statute are common, and the state often has no interest in the outcome. Requiring the state to defend these cases and to pay attorney's fees is an unnecessary drain on state resources.

HB 2294 also would allow the state to obtain interlocutory appeals in certain instances based on sovereign immunity. An interlocutory appeal provides for immediate review of a trial court's order before a final judgment, thus preserving state resources by providing for appellate review without going through a full trial.

The bill would not affect the availability of *ultra vires* suits, which are suits against a state official rather than the state itself.

Governmental immunity, which applies to local government entities such as cities and counties, would not be affected by this bill and would continue to be waived under the UDJA.

OPPONENTS SAY:

HB 2294, by declaring that sovereign immunity was not waived under the UDJA, would make it more difficult for plaintiffs with worthy claims involving the unlawful exercise of authority by state officials to find attorneys to take their cases. The UDJA provides for attorney's fees, which generally are not available for *ultra vires* suits against state officials unless the suit is based on another statute that provides for them. Attorney's fees also provide an incentive for parties to settle a lawsuit. If sovereign immunity were restored, suits against the state under the UDJA no longer would be possible. As a result, this bill could affect not only suits interpreting statutes but also suits where important constitutional rights had been violated.

OTHER OPPONENTS SAY:

The bill should be amended to clarify that local governments would not have immunity under the UDJA. It is possible that "sovereign immunity" could be broadly interpreted to include local governmental immunity.

SUBJECT: Revising ballot language for junior college district annexation elections

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 7 ayes — Branch, Bonnen, Brown, D. Howard, Johnson, Lewis, Patrick

0 nays

2 absent — Castro, Alonzo

WITNESSES: None

BACKGROUND: Education Code, ch. 130 assigns service areas to each junior college district for providing educational services. A service area includes territory both within and beyond the boundaries of the district where the junior college provides services. A junior college district is allowed to enlarge its district boundaries and annex territory either by contract or by election.

Education Code, sec. 130.065 sets forth the requirements for annexation by election. The ballot must include a description of the territory proposed for annexation.

DIGEST: HB 2433 would require additional information to be included on an election ballot for a proposition to expand the boundaries of a junior college district. The ballot would have to include the name of the junior college district, the territory to be annexed, and a statement that approving the annexation also would authorize the imposition of a property tax for junior college purposes. The district's current tax rate per $100 valuation of taxable property would have to be listed. If the rate had not been adopted, the tax rate for the preceding year would have to be listed.

The bill would take effect September 1, 2011, and the new language would be included on ballots for elections held on or after this date.

SUPPORTERS SAY: HB 2433 would bring greater transparency to voters weighing whether or not to expand the boundaries of a junior college district. The language that currently is included on a junior college district annexation election ballot does not include the applicable tax rate or identify the junior college

district seeking to annex territory. Instead, the ballot language centers on the question of whether a certain territory, specifically identified on the ballot, should be annexed for junior college purposes. HB 2433 would require that a ballot for a junior college district annexation election include specific information about the district's taxing authority and current property tax rate. The bill also would require the ballot language for these elections to identify the name of the junior college district attempting to annex territory.

Permitting community and junior colleges to annex territory without fully disclosing the costs associated with the expansion creates a hidden tax burden for Texans. This is especially true in smaller communities that lack their own media outlets, making it more difficult for some voters to have a complete picture of all of the issues. The role of an educator is to seek the truth and clearly explain the process and consequences of an action, but these ballot initiatives typically only focus on the potential benefits for students paying cheaper "in-district" tuition rates. It is disappointing and ironic that institutions of higher learning are withholding information that would have a considerable fiscal impact on the public that they are meant to serve.

Community college districts are trying to secure more funding for various reasons. Expanding a district's boundaries could instantly generate billions of dollars for its tax base to be paid by the homeowners and businesses within the newly acquired areas. The current budget shortfall could increase the need for junior and community college districts to seek more funding and become even more aggressive in their attempts to annex districts to fill gaps in state funding. HB 2433 could help to limit this practice and return the focus to education rather than funding.

OPPONENTS SAY:

HB 2433 would appear to promote transparency in junior and community college annexation ballot initiatives, but the bill in its current form could prejudice voters by simply listing the name of the college and the district's ad valorem tax rate. HB 2433 would require state-sanctioned ballot language that used loaded words (e.g., "imposition") and only highlighted the burdens of annexation. It would be similarly biased if the Legislature approved a measure to change the ballot language to include words like "benefit" and specified the tuition discount amount and the number of additional students that could be served.

When voters head to the polls to decide whether or not to expand a junior or community college district, they must carefully weigh the potential costs associated with joining the district (taxes) against the potential benefits (lower tuition, increased access to higher education and vocational training, economic growth, and lower unemployment). The current process for permitting a ballot initiative for junior or community college annexation involves several local hearings to allow voters on either side of the issue to address the pros and cons of annexation within their communities. These meetings provide the most appropriate forum for local voters to voice their positions, as opposed to having the state write the ballot language to emphasize one side of the issue.

Junior and community colleges have played a critical role in helping to educate Texans at an affordable price, despite substantial decreases in state funding. While the demand for enrollment continues to soar, much of the state is not included in the tax base of any junior or community college. As a result, access to higher education and vocational training is limited to larger towns and cities, and the cost burden is shifted onto the student. Many local communities have recognized the long-term effects of these problems, and have increased support for annexation to ensure that their residents can obtain access to a high-quality education at a lower cost. HB 2433 could create a chilling effect against any expansion of educational opportunities at the expense of Texas students.

NOTES:

The companion bill, SB 1226 by Hegar, passed the Senate by 31-0 on the Local and Uncontested Calendar on April 7 and has been referred to the House Higher Education Committee.