HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, April 24, 2013
83rd Legislature, Number 58
The House convenes at 10 a.m.

Sixteen bills are on the daily calendar for second-reading consideration today. They are analyzed in today's Daily Floor Report and are listed on the following page.

Two postponed bills — HB 1902 by Eiland and Sheets and HB 1905 by Eiland and Sheets — are on the supplemental calendar for second-reading consideration today. The analyses of these bills are available on the HRO website at http://www.hro.house.state.tx.us/BillAnalysis.aspx.

The House will consider a Congratulatory and Memorial Calendar today.

The Appropriations Committee had a conference committee meeting scheduled for 8 a.m. in Room E1.036. The following House committees had public hearings scheduled for 8 a.m.: Agriculture and Livestock in Room E1.010; Economic and Small Business Development in Room E2.028; Higher Education in Room E1.014; Public Health in Room E2.012; and Special Purpose Districts in Room E2.014. The Urban Affairs Committee has a public hearing scheduled for 10:30 a.m. or on adjournment in Room E2.016. The State Affairs Committee has a public hearing scheduled for 1 p.m. or on adjournment in JHR 140. The following House committees have public hearings scheduled for 2 p.m. or on adjournment: Corrections in Room E2.010 and Culture, Recreation, and Tourism in Room E2.026.

Bill Callegari
Chairman
83(R) – 58

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Wednesday, April 24, 2013
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SUBJECT: Adding UIL and two authorities to Sunset review and revising schedules

COMMITTEE: Government Efficiency and Reform — committee substitute recommended

VOTE: 7 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Taylor, Scott Turner, Vo

0 nays

WITNESSES: For — None

Against — None

On — Ken Levine, Sunset Commission

BACKGROUND: Education Code, sec. 33.083 requires the University Interscholastic League (UIL), as part of The University of Texas at Austin, to meet annual reporting requirements and submit its rules and procedures to the commissioner of education for approval.

In 1963, the 58th Legislature authorized the creation of the Clear Lake City Water Authority in Harris County. In 1985, the first called session of 69th Legislature authorized the creation of the Sulphur River Basin Authority.

DIGEST: CSHB 1675 would require the University Interscholastic League (UIL) to undergo a Sunset review during the period when other state agencies to be abolished in 2015 were reviewed. The UIL would not be abolished and would pay for the cost of the Sunset Advisory Commission's review.

The bill also would require that the Clear Lake City Water Authority and the Sulphur River Basin Authority undergo Sunset review during the 2015 cycle. Neither authority would be subject to abolishment. The reviews would assess the governance, management, and operating structures of the entities as well as their compliance with legislative requirements. Both authorities would pay for the costs of their review.

The bill also would change the Sunset dates for various governmental

agencies as follows:

- the Texas Department of Transportation from 2015 to 2017;
- regional educational services centers from 2015 to 2019;
- the Texas State Board of Public Accountancy from 2015 to 2019;
- the Texas Invasive Species Coordinating Committee in 2021;
- the Texas Council on Purchasing from People with Disabilities from 2015 to 2021;
- the division of workers' compensation of the Texas Department of Insurance and the Office of Injured Employee Counsel from 2017 to 2021; and

The Early Childhood Health and Nutrition Interagency Council no longer would go through a separate review but be included in the periodic review of the Department of Agriculture.

Unless specifically continued, these agencies would be abolished on their Sunset dates.

CSHB 1675 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, 2013.

SUPPORTERS SAY:

CSHB 1675 appropriately would make the University Interscholastic League subject to oversight in the form of a Sunset review. The Sunset Commission could review several areas of concern relating to the operations of UIL, which is a statutorily created state organization. More than one-third of UIL's employees make $80,000 or more per year. Each year, UIL collects substantial dues from local school districts and yet has never undergone an external audit. Recently, UIL tried to extend its reach by seeking to require competition officials to register with the league. Despite claims that UIL is not a state agency, the organization has benefitted from representation from the attorney general's office in a drawn out court case.

Placing under Sunset review the Sulphur River Basin Authority and the Clear Lake City Water Authority would provide additional oversight protection. Water authorities are handling larger amounts of state money, including multibillion-dollar projects, as water planning becomes ever more crucial throughout Texas. These water entities should be subject to more than the review of their financial and/or management operations,

such as annual audits. In conducting its reviews, the Sunset Commission looks at ethics, governance, efficiency, and other issues related to transparency.

A Sunset review would result in greater transparency in the way the these water authorities conduct their operations. Over the last 15 years, the Sulphur River Basin Authority has been the subject of complaints for contracting with entities in the Dallas Metroplex to provide water supplies outside of its Region D regional water planning area, and the Clear Lake City Water Authority has significant existing bond obligations and has been involved in extended legal proceedings.

CSHB 1675 also would improve the effectiveness and efficiency of the Sunset Commission by better grouping Sunset reviews by agency and subject matter. For example, the Texas Council on Purchasing from People with Disabilities would be moved to the 2021 cycle, when the Sunset Commission will review purchasing agencies.

Moreover, the bill would make room within the next Sunset review cycle for the commission to focus on the seven large Health and Human Services agencies. Sunset staff should be given an adequate opportunity to closely review these very complex agencies to find efficiencies.

OPPONENTS SAY:

CSHB 1675 inappropriately would make the University Interscholastic League subject to the Sunset review process. UIL operates under the Division of Diversity and Community Engagement at the University of Texas at Austin. Other divisions of the University of Texas are not subject to Sunset review. The House Public Education Committee conducted a review of UIL during the last interim and published a favorable review and offered a few recommendations. UIL is a self-supporting organization that does not receive state appropriations and is already subject to certain audits and reporting requirements.

HB 1675 unnecessarily would require the Sulphur River Basin Authority and the Clear Lake Water Authority to undergo Sunset review. The Sulphur River Basin Authority is required to submit the results of a management audit every five years to the Texas Commission on Environmental Quality (TCEQ). The Clear Lake City Water Authority each year submits to the TCEQ the results of its required financial audit.

NOTES:

The committee substitute differs from the bill as filed by:

- requiring the University Interscholastic League, the Clear Lake City Water Authority, and the Sulphur River Basin Authority to undergo Sunset review;
- changing agencies set to be reviewed in the 2015 Sunset review cycle to later cycles;
- giving the Texas Department of Insurance's division of workers' compensation and the Office of Injured Employee Council later Sunset review dates.

The companion bill, SB 207 by Nichols, was referred to the Senate Committee on Transportation on February 25.

SUBJECT: Continuing the Texas Department of Housing and Community Affairs

COMMITTEE: Urban Affairs — favorable, without amendment

VOTE: 6 ayes — Dutton, Alvarado, Elkins, Leach, J. Rodriguez, Sanford

0 nays

1 absent — Anchia

WITNESSES: For — Daniel Markson, Texas Association of Builders - Multifamily Council; (*Registered, but did not testify:* Donna Chatham, Association of Rural Communities in Texas; Ginger McGuire, Rural Rental Housing Association of Texas; David Mintz, Texas Apartment Association; Scott Norman, Texas Association of Builders; Deena Perkins, Texas Association of Community Development Corporations; Cyrus Reed, Lone Star Chapter, Sierra Club; Jeanne Talerico, Texas Association of Local Housing Finance Agencies)

Against — None

On — Eric Beverly, Sunset Advisory Commission; Joe Garcia and Timothy Irvine, Texas Department of Housing and Community Affairs; (*Registered, but did not testify:* Brooke Boston and Cameron Dorsey, Texas Department of Community Affairs; Ken Levine, Sunset Advisory Commission)

BACKGROUND: The 72nd Legislature created the Texas Department of Housing and Community Affairs (TDHCA) in 1991 by merging the Texas Housing Agency and the Texas Department of Community Affairs. The TDHCA underwent a full Sunset review in 2011, and the 82nd Legislature passed HB 2608, which included most of the Sunset Commission's recommendations for the continued operation of the department. In June 2011, the governor vetoed HB 2608 over concerns about language pertaining to the department's disaster recovery functions. During the special legislative session in 2011, the 82nd Legislature made changes to the disaster recovery program and continued the department until September 1, 2013. The General Land Office now operates the disaster recovery program previously operated by the TDHCA. Before last

biennium, the TDHCA last underwent Sunset review in 2003.

Agency function. The TDHCA works to improve the availability of affordable housing and provide funding for community assistance, and it regulates the manufactured housing industry. The department's functions include:

- administering federal and state programs that provide homebuyer assistance, serve the homeless, finance multifamily housing development, assist Texans with utility payments, and rehabilitate homes;
- acting as a conduit for federal funds for housing and community services, such as housing tax credits for affordable housing, rental assistance, foreclosure assistance, and home weatherization;
- assisting low- and moderate-income families with home rehabilitation, reconstruction, or first-time home purchase;
- operating as a housing finance agency by managing housing programs requiring the participation of private investors and private lenders;
- serving as an information clearinghouse on affordable housing resources in Texas;
- regulating the manufactured housing industry and maintaining official records of manufactured home ownership, location, and status, including liens; and
- ensuring program compliance with state and federal laws that govern housing programs.

Governing structure. The governor appoints the seven members of the TDHCA board, including the five members of a separate Manufactured Housing Division board. The governor also designates the presiding officers of each board. Board members are public and serve staggered, six-year terms.

Staffing. As of November 2012, the department employed a staff of 311, including 64 in its Manufactured Housing Division.

Funding. The Legislature appropriated $171.8 million to the department in fiscal 2011, with $22.6 million from general revenue. General revenue funds decreased to $8.1 million per year in fiscal 2012 and 2013 because of a decrease in the Housing Trust Fund and the discontinuation of appropriations for a homelessness initiative for Texas' eight largest cities.

Most funds that flow through the department do not go through the standard legislative appropriations process. Long-standing federal programs, including housing tax credits and single- and multi-family bonds, authorize the state to issue tax credits or bonds to raise capital for development or home ownership activities. Only administrative funds for these programs are included in the legislative process. The TDHCA receives these administrative funds as appropriated receipts. The federal government determines the amount of credits and bonds each state can issue according to a population-based formula.

In fiscal 2011, the department expended or encumbered about $386 million in funds for activities predominantly benefiting low- and moderate-income Texans. About 98 percent of these housing and community services funds came directly from the federal government as grants and payments. Manufactured housing funds came from licensing fees, documentation fees, and some federal funds.

DIGEST:

HB 3361 would continue the TDHCA until September 1, 2025. The bill would:

- change the scoring and application process for housing tax credits;
- expand the department's cease-and-desist authority to apply to the unlicensed, not just licensed, construction, sale, and installation of manufactured homes;
- clarify the department's penalty appeals hearings to the State Office of Administrative Hearings and require judicial review to be based on the substantial evidence rule;
- allow the department to administratively dismiss baseless and nonjurisdictional complaints regarding manufactured housing;
- allow the Manufactured Housing Division to order direct refunds to consumers as part of the manufactured housing complaint settlement process;
- authorize the department to use debarment as a sanction and protection in all its programs;
- require the Manufactured Housing Division to develop and implement a policy on negotiated rulemaking and alternative dispute resolution;
- change manufactured housing licensing requirements and fees; and
- eliminate certain statutorily required reports.

Housing tax credits. HB 3361 would remove written statements of support from state-elected officials as a scoring item for ranking applicants

for low-income housing tax programs. It would add adopted resolutions from a local city council or commissioners court as the second-highest scoring item. The department still could consider letters from state elected officials as part of a housing tax credit application, but they would not affect an applicant's score. Letters from neighborhood organizations would continue to be scored as part of a housing tax credit application, but would be ranked last.

In the event the state received emergency housing tax credits or related federal funding, the department could consider applications for these funds outside the usual housing tax credit application cycle. Changes to the tax credit application process would apply only to applications submitted on or after the effective date of the bill.

Cease-and-desist authority. HB 3361 would allow the director of the Manufactured Housing Division to issue cease-and-desist orders to unlicensed manufactured home sellers, builders, and installers who had violated a law, rule, or written agreement related to the sale, financing, or installation of a manufactured home, unless the violation was regulated by another agency. The TDHCA would continue to have cease-and-desist authority over licensed violators.

Appeals, complaints, and debarment. HB 3361 would transfer the TDHCA's penalty appeals hearings to the State Office of Administrative Hearings and require judicial reviews based on a substantial evidence review rather than a *de novo* review. The Manufactured Housing Division director could allow an authorized employee to administratively dismiss baseless and nonjurisdictional complaints after an investigation without having to involve the division governing board, except to inform them of the reason for such dismissals.

Under the bill, the Manufactured Housing Division could order direct refunds to consumers as part of the manufactured housing complaint settlement process. HB 3361 would also authorize the TDHCA to use debarment as a sanction and protection against repeat violators in all of the department's programs. A person debarred from participation in a department program could appeal their debarment to the TDHCA board.

Finally, the bill would require the Manufactured Housing Division to develop and implement a policy to encourage the use of negotiated rulemaking for the adoption of division rules and alternative dispute

resolution procedures to resolve internal and external disputes under the division's jurisdiction. The new procedures would have to conform to model guidelines issued by the State Office of Administrative Hearings. The division would have to collect data concerning the effectiveness of the new rulemaking and alternative dispute resolution procedures.

Licensing, fees, and background checks. HB 3361 would remove from statute the department's issuance of a license to a rebuilder of manufactured housing. It also would remove manufactured housing retailers from operating more than one location under a single license. It would allow the department to charge a fee for reprinting a manufactured housing license and would require a fingerprint-based criminal history background check for individuals licensed as manufactured housing manufacturers, retailers, brokers, or installers.

Reporting requirements. The bill would remove requirements for the TDHCA to issue reports on energy and peak-demand savings, the Contract for Deed Conversion Program, and transfers of funds, personnel, or in-kind services to the Texas State Affordable Housing Corp.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

Housing tax credits. HB 3361 would improve allocation of housing tax credits by providing more equal community input in the application process. The bill would ensure evaluations in the application process were more representative of the community as a whole by removing weighted written statements from state-elected officials from the application process and adding a resolution of support adopted by a city council or commissioners court to replace neighborhood association letters as the second-most highly ranked scoring item. Written statements from neighborhood associations still would be ranked as a lesser scoring item.

Under HB 3361, state officials still could write letters voicing their support for or opposition to a development but these statements would not carry more weight than other important criteria, such as cost, location, and services. Given the size of many electoral districts and the short application time frame for allocating credits, state officials are often not in a position to meaningfully evaluate a proposed development or obtain constituent input sufficient to draft an informed letter required by statute. Under the current system, if a state legislator opts not to write a statement, the lack of a statement could kill an otherwise strong housing application.

While input from a state elected official is important, the current requirement puts legislators on the spot to make decisions about a development or endorse a developer without having the time to sufficiently vet a project.

HB 3361 would ensure community members' support or opposition was voiced with input through their local elected officials.

HB 3361 also would weigh neighborhood association letters as a lesser scoring item. While community input is important, neighborhood association statements are not always representative of the community as a whole and are regularly contested. In the past, neighborhood letters outweighed other important criteria, such as the size, quality and cost of a development and gave small neighborhood organizations the equivalent of veto power over an application. Giving less weight to neighborhood association letters and more weight to local elected officials would prevent community members from being denied input in the application process because they did not belong to the right neighborhood or homeowners association.

HB 3361 also would improve efficiency by allowing the department to allocate emergency housing tax credits during a separate emergency tax credit cycle. Statute restricted the department's ability to allocate emergency tax credits the state received as part of the federal American Recovery and Reinvestment Act in 2009. HB 3361 would ensure the TDHCA could act quickly in future emergency circumstances to allocate credits as needed. Stakeholders wanting to express support or opposition during a different allocation cycle could always attend the department's hearings, which are open to the public.

Cease-and-desist authority. HB 3361 would improve the Manufactured Housing Division's ability to protect consumers from unlicensed and unsafe installation and sale of manufactured homes. The division already has this authority over licensed activities, but it lacks the ability to prevent unlicensed operators from selling a consumer a repossessed manufactured house with tax liens on the property or from improperly installing an illegal bootlegged home. Having cease-and-desist authority would allow the division to punish unlicensed operators and encourage them to obtain a license and follow the law so consumers were protected and manufactured housing was produced to a high standard. The department could assess violators administrative penalties of $1,000 a day.

This expanded authority would help the division to enforce what is already against the law. TDHCA does not have a financial incentive to use its authority more than necessary, as the division is funded through appropriated receipts and the majority of funds from any fines assessed are funneled to the state. The department would probate any fines assessed if the unlicensed operator became licensed.

Appeals, complaints, and debarment. By clarifying that the department can refer penalty hearings to the State Office of Administrative Hearings and requiring a substantial evidence review, HB 3361 would ensure that appeal hearings were unbiased and reviews were based on the established record rather than a completely new trial. Under HB 3361, the TDHCA board could still reverse, modify, or accept the SOAH judge's proposal for decision, preserving their role in final decision making. The Manufactured Housing Division already uses SOAH for its enforcement hearings.

By allowing Manufactured Housing Division staff to administratively dismiss baseless and nonjurisdictional complaints, HB 3361 would save the department time by eliminating the need for the TDHCA board to consider each complaint while preserving accountability. Allowing a licensee to pay a refund directly to consumers would increase efficiency without risking a manufactured housing licensee's ability to maintain a surety bond.

Under HB 3361, the department would improve safety and protect consumers by barring from participation in TDHCA programs bad actors who misappropriate funds, construct unsafe homes, or repeatedly fail to comply with department policy. The bill would not grant any new powers to the department but would expand its authority to issue sanction across all its programs. Those facing debarment would always have the right to cure their violations and to appeal decisions to the TDHCA board.

By requiring the TDHCA to develop a policy regarding negotiated rulemaking and alternative dispute resolution, HB 3361 would bring the department and the Manufactured Housing Division in line with model guidelines adopted by other state agencies. This requirement would not require additional staffing or other expenses.

Licensing, fees, and background checks. HB 3361 would further improve consumer protection and safety by strengthening the

Manufactured Housing Division's practice of conducting background checks for those applying for manufactured housing licenses. The division currently performs background checks using a person's name. Under the bill, those applying for a license would submit fingerprints to obtain a criminal history from the Department of Public Safety (DPS) and the Federal Bureau of Investigation. Fingerprint background checks are the most reliable way to uncover criminal history and would replace the need for background checks for those renewing a license because the DPS would automatically notify the division of subsequent arrests. HB 3361 would help protect the public from entering into an expensive financial transaction with an individual with a criminal history of fraud or theft.

HB 3361 would make common-sense changes to licensing, such as establishing a fee for reprinting of licenses and removing unnecessary licenses for rebuilders and eliminating the ability for a manufactured housing seller to operate more than one location under a single license. The division has never issued a branch office license, has not issued a rebuilder license since 2006, and does not anticipate issuing these licenses in the future.

Reporting requirements. HB 3361 would improve department efficiency by eliminating reports that were no longer relevant or duplicate reports issued by other agencies.

TDHCA as separate agency. Despite claims by some to the contrary, TDHCA should continue to operate as a separate agency and not be combined with the Texas State Affordable Housing Corp. (TSAHC). TDHCA performs an essential role by improving Texans' quality of life through the development of better, affordable communities. TSAHC, as a state authorized nonprofit, can receive tax-exempt donations and raise private funds that it could not access under a combined, quasi-governmental agency. In contrast, TDHCA has a better capacity to perform activities such as underwriting and the administration of federal grants and state funds that TSAHC cannot.

Moreover, because TSAHC does not receive state appropriations, TSAHC employees do not receive state benefits, such as retirement benefits that could increase costs to the state. Combining TDHCA under TSAHC also would negatively impact the department's ability to run its colonia initiatives and would prevent the department from administering federal grants and state funds.

OPPONENTS SAY:

Housing tax credits. HB 3361 would limit community input in the housing tax credit process. The department should continue to rank community input highly because local community organizations know best the needs of their neighborhood. A city council resolution may not accurately reflect the particular concerns of the neighborhood association members who would live next to a housing development.

Letters from state elected officials should also continue to receive points. Constituents who may not live in the area surrounding a proposed housing development but would nonetheless be affected by it should be able to express their concerns through their state senator or representative. HB 3361 would allow only neighborhood associations whose boundaries included the development to submit ranked input. This means tightly drawn neighborhood association boundaries could exclude the input of a neighbor from a different association who lived down the street from a development while including the input of a neighbor who lived farther away, but still inside the neighborhood association's boundaries.

While it is important to respond quickly to emergencies, changing the application cycle for federal emergency housing funds could make it more difficult for stakeholders to express concerns about a housing development.

Cease-and-desist authority. By expanding the TDHCA's authority to issue cease-and-desist orders, HB 3361 inappropriately would give a dangerous tool that could be misued to attack problems that should be solved by the marketplace or, as a last resort, the courts. Giving the TDHCA expanded cease-and-desist authority would pose a clear risk of regulatory overreach.

Appeals, complaints, and debarment. The housing industry and the marketplace are already effective at identifying and punishing bad actors without giving the department full debarment authority. By allowing the TDHCA to debar participants from all programs, HB 3361 could unnecessarily push out operators for minor violations.

HB 3361 also would create an unnecessary barrier to entry for operators in the Manufactured Housing Division by requiring fingerprint-based background checks instead of name checks. Requiring fingerprint-based background checks for individuals also would erode unnecessarily

individual privacy rights without adding much more information than a name check.

TDHCA as separate agency. To save money and increase government efficiency, Texas should consolidate its functions with the Texas State Affordable Housing Corp. Combining the agencies would streamline low- and moderate-income housing functions, improve efficiency, and save the state money on administrative overhead. It also would allow the departments to privatize functions that could be better handled by private industry.

NOTES:

The identical companion bill, SB 214 by Birdwell, was referred to the Senate Intergovernmental Relations Committee on March 12.

SUBJECT: Changing the composition of two TDLR advisory boards

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 6 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez

0 nays

3 absent — Miles, Price, S. Thompson

WITNESSES: For — Ned Munoz, Texas Association of Builders; (*Registered, but did not testify:* Jon Fisher, Associated Builders and Contractors of Texas)

Against — Todd McAlister, Air Conditioning Contractors Association of Texas

On — (*Registered, but did not testify:* Renea Beasley, IEC of Texas; William Kuntz, Texas Department of Licensing and Regulation)

DIGEST: CSHB 1503 would expand the number of appointed members of the Air Conditioning and Refrigeration Contractors Advisory Board from seven to nine. The number of full-time licensed air conditioning and refrigeration contractors would be increased from four to five, including one member who was a licensed contractor principally engaged in air conditioning and refrigeration contracting who worked in a municipality. The other additional member would be a home building contractor.

CSHB 1503 also would require that one of the members of the nine-member Electrical Safety and Licensing Advisory Board be a home building contractor.

The additional board members would be appointed upon the expiration of the current board members' terms.

The bill would take immediate effect if finally passed by two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

The Air Conditioning and Refrigeration Contractors Advisory Board and the Electrical Safety and Licensing Advisory Board provide key technical support and information to the Commission of Licensing and Regulation. Adding home building contractors to these boards would provide an important holistic perspective on how air conditioning, refrigeration, and electrical work fit into the affordability and other aspects of building construction. Having additional input from building contractors on these boards would be preferable to merely relying on general contractors speaking during the public meeting phases of rulemaking. It would be more efficient and effective to have building contractors on the board as a way to understand the full implications of proposed changes in rules.

While the Air Conditioning and Refrigeration Contractors Advisory Board already includes four contractors, none are general building contractors. Other technical advisory boards, such as the Board of Plumbing Examiners, also include building contractors.

OPPONENTS SAY:

The bill would require that these advisory boards each have a member who was a home building contractor, but the purpose of these advisory boards is not to provide a complete perspective on the impact of air conditioning, refrigeration, and electrical elements on the construction process. That is the job of the Commission of Licensing and Regulation. Rather, these advisory boards typically focus on narrow technical matters to advise the commission on safety and standards. The input would be minimal from a building contractor.

Builders are already free to comment in the public hearings of these advisory boards under the Open Meetings Act, though they have only infrequently done so in the past.

In addition, adding another two members to the Air Conditioning and Refrigeration Contractors Advisory Board would only hinder its ability to make recommendations in a timely manner to the commission. These advisory boards are entirely voluntary and already have difficulty assembling a quorum.

OTHER OPPONENTS SAY:

CSHB 1503 would not go far enough. The boards should include both a home construction building contractor and a commercial building contractor, as included in the original filed bill. The Board of Plumbing Examiners already includes such members. These advisory boards would benefit from the perspective of both contractors who were principally

engaged in home construction and those who were engaged in commercial construction, which may have different considerations and pricing structures.

NOTES:

The committee substitute differs from the bill as filed in that it would:

- specify that one new member of the Air Conditioning and Refrigeration Advisory Board be a licensed contractor principally engaged in air conditioning and refrigeration contracting and work in a municipality;
- remove the requirement that one new member of the Air Conditioning and Refrigeration Advisory Board be a commercial building contractor;
- require that one member of the nine-member Electrical Safety and Licensing Advisory Board be a home contractor, rather than increasing the number of members to 11 and requiring both a home and a commercial building contractor be members, as in the filed bill.

The author intends to bring an amendment to require the additional home building contractor member of each advisory boards to be a member of a statewide building trade association.

SUBJECT: Revising provisions governing transportation reinvestment zones

COMMITTEE: Transportation — committee substitute recommended

VOTE: 11 ayes — Phillips, Martinez, Burkett, Y. Davis, Fletcher, Guerra, Harper-Brown, Lavender, McClendon, Pickett, Riddle

0 nays

WITNESSES: For — C. Brian Cassidy, Alamo Regional Mobility Authority (RMA), Cameron County RMA, Camino Real RMA, Central Texas RMA, Grayson County RMA, North East Texas RMA (*Registered, but did not testify*: Mary Calcote, Real Estate Councils of Texas; Randy Erben, Port of Corpus Christi Authority; Darrick Eugene, Board of Trustees of the Galveston Wharves; Jeff Heckler, Raba Kistner Infrastructure; Donald Lee, Texas Conference of Urban Counties; Stephen Minick, Texas Association of Business; Lawrence Olsen, Texas Good Roads Association; Beth Ann Ray, Austin Chamber of Commerce)

Against — Terri Hall, Texas TURF; Don Dixon

On — (*Registered, but did not testify*: James Bass, Texas Department of Transportation)

BACKGROUND: Current law allows municipalities and counties to establish transportation reinvestment zones (TRZs) in their boundaries to fund highway projects. Municipalities and counties may dedicate to a TRZ a tax increment from property taxes collected in the zone annually. For a municipality (Transportation Code, sec. 222.106) or county (Transportation Code, sec. 222.107) establishing a TRZ:

- the *tax increment base* of a local entity is the total appraised value of all real property located in a zone for the year in which the zone was designated;
- the *captured appraised* value is the total appraised value of all real property in a zone for a subsequent year, minus the entity's tax increment base; and
- a *tax increment* is the amount of property taxes assessed for one year on the captured appraised value of real property in the zone.

Pass-through financing allows public or private entities to construct state highway projects and receive payment from the Texas Department of Transportation (TxDOT) following completion of the project. Pass-through "tolls" are negotiated payments made incrementally to the entities building a road and are based on traffic volume on the new road. The payments are made as if tolls were being collected from motorists (though they are not) by the operators upon project completion.

Current law also allows local governments to dedicate a sales tax increment, defined as the portion or amount of tax increment generated from sales and use taxes attributable to the zone, to pay for projects authorized as part of a pass-through financing agreement.

DIGEST:

CSHB 1716 would make various changes to state laws governing transportation reinvestment zones. The bill would expand the range of projects that could be financed by a sales tax increment to include transportation projects in a transportation reinvestment zone. It also would amend current law to allow reinvestment zones for one or more transportation projects.

The bill would prohibit municipalities and county commissioners courts from rescinding a pledge to an entity until contractual commitments were satisfied. Sponsoring pass-through tolling agreements would be excluded as a purpose of establishing a transportation reinvestment zone.

A county resolution designating a reinvestment zone would have to include a finding that promotion of the project would cultivate the improvement, development, or redevelopment of the zone. A reinvestment zone designated by a county would terminate upon repayment of money owed under an agreement for a transportation project in the zone.

A local government could designate a TRZ outside its boundaries upon finding that the project would serve a public purpose and would benefit property and residents in the zone. The zone would have to be designated for the same project by contiguous local governments and would have to be subject to an agreement for joint administration by participants.

The bill would recodify the definition of a transportation project as a toll road, passenger or freight rail facility, ferry, airport, pedestrian or bicycle facility, intermodal hub, or transit system. It would repeal language

allowing counties to assess all or part of the cost of a transportation project against property in the zone.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 1716 would enhance the ability of counties and municipalities to use an existing tool, transportation reinvestment zones, to finance transportation projects. The bill would not signal a major shift in state policy; rather, it would provide greater clarity and flexibility to local governments using reinvestment zones to finance transportation improvements. The bill would take some worthwhile steps toward improving a transportation financing option available to local governments in an era of increasing congestion and limited resources.

Under the bill, a sales tax increment authorized by the 82nd Legislature in 2011 no longer would be confined to pass-through tolling agreements but could be used for any transportation project in a reinvestment zone. This measure would allow local governments within a reinvestment zone to commit a portion of local sales and use taxes collected in the zone to a transportation project. This would increase revenue collection options available to reinvestment zones that could then be committed to securing funding for transportation projects. These projects are in turn major drivers of economic development.

The bill also clarifies, updates, and refines the statutory language governing reinvestment zones to smooth potential legal snags that could hang up financing for projects in the zone. To this end, the bill changes current language to prohibit an entity from rescinding pledged revenue from a zone until all contractual commitments are resolved. Current law prohibits rescinding a pledge only if a transportation developer itself had pledged revenue for funding purposes. If enacted, the bill also would clarify that a reinvestment zone could be established to finance more than one transportation project. This is an important clarification for mixed-modal projects that have become priorities in many metropolitan areas in the state.

Current law has no provision sanctioning local governments to enter into formal agreements to finance a reinvestment zone project outside their jurisdiction. CSHB 1716 would allow a local government that would benefit from a transportation project outside its jurisdiction to create a zone and pledge funds to assist in securing financing for the project. This

change would recognize that transportation improvements, by their very nature, span jurisdictions, as do the benefits of such improvements.

Contrary to those who criticize reinvestment zones for lack of public input processes, reinvestment zones actually afford a great opportunity for input. The process for designating a zone is the same as that which local governments must follow to make decisions on a wide range of issues. Municipalities and counties must conduct public hearings and gather public input prior to designating a zone through an ordinance or resolution. If local residents object to a project, they will be given plenty of chances to oppose it publicly. In addition, many of the projects financed through reinvestment zones have been identified in broader transportation planning efforts that have their own public input processes.

While there may be other approaches to securing additional funding for highways, fee and tax increases have proved a political impossibility in recent sessions. In a context of fixed state and federal funds for transportation projects, it is critical to maximize options available for developing transportation projects.

Improving local governments' ability to effectively use transportation reinvestment zones would allow them to maximize available resources without tax increases. Despite some claims, the bill would not authorize a tax increase directly or indirectly. Although property values in a zone may increase as a result of economic development stemming from a transportation project, no property is taxed at a higher rate due to its inclusion in a reinvestment zone.

With regard to concerns about using toll roads, not a single reinvestment zone in the state has been used to finance a project with tolls. Yet there is nothing in state law preventing statewide streams of taxpayer dollars being used for building tolled roads. As such, it makes no sense to restrict the range of projects local governments could fund when they are equally affected by worsening congestion and inadequate infrastructure.

OPPONENTS SAY:

Increasing opportunities to establish transportation reinvestment zones would represent an expansion of the troublesome practice of using local taxes to fund transportation projects that the state should be financing. Allowing local governments to commit a portion of sales taxes to transportation projects commits resources that otherwise would be available for police, fire, parks, and other local priorities. This, in effect,

devolves what should be a state responsibility to the local level without actually providing any additional funding for roads.

The problem is all the more salient as the 82nd Legislature in 2011 allowed local governments to use reinvestment zones to finance a wide range of projects, including toll roads. Under CSHB 1716, local governments would be able to commit local property and sales taxes to finance roads that are then tolled. This clearly would carve a path to an unfair double-tax on local residents. At the very least, transportation projects funded through reinvestment zones should be limited to public non-tolled highways.

Another trouble with enhancing the use of transportation reinvestment zones is that there is only a very limited public input process inherent in these arrangements. Without hearings at boards or commissions, the public is not given ample opportunity to comment on a zone. As such, reinvestment zones can be used to force through financing for extremely expensive and inefficient passenger rail projects and others that represent a poor use of taxpayer funds.

CSHB 1716 would continue the tradition of evading difficult issues confronting transportation finance in Texas. Expanding the use of reinvestment zones does not address the real problems facing the state – revenue streams that have been declining in relative value for decades. Reinvestment zones do not provide any additional state revenue to local entities and further a longstanding precedent of skirting difficult decisions about transportation funding for the state.

NOTES:

The companion bill, SB 1110 by Nichols, was passed by the Senate and favorably reported by the House Transportation Committee. The author intends to substitute the Senate bill for CSHB 1716 on the House floor.

The committee substitute for HB 1716 differs from the bill as filed by adding a provision allowing a local government to designate a transportation reinvestment zone outside its boundaries upon finding that the project would serve a public purpose and benefit property and residents in the zone.

A related bill, HB 1290 by Phillips, allowing two or more local governments to jointly administer reinvestment zones, was passed by the House and has been referred to the Senate Committee on Transportation.

SUBJECT: Review of charitable organizations participating in a state campaign

COMMITTEE: State Affairs — favorable without amendment

VOTE: 10 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Menéndez, Oliveira

0 nays

3 absent — Hilderbran, Smithee, Sylvester Turner

WITNESSES: For — Jackie Rogers, Capital Area SECC; (*Registered, but did not testify*: Robert Flores, Texas Association of Mexican-American Chambers of Commerce)

Against — None

BACKGROUND: Government Code, sec. 659.146 requires a charitable organization with an annual budget not exceeding $100,000 to provide a copy of its annual IRS nonprofit filing and an accountant's review in order to be eligible to participate in the state employee charitable campaign. A participating organization with an annual budget exceeding $100,000 must undergo a full audit each year.

DIGEST: HB 2252 would amend Government Code, sec. 659.146 to require a participating charitable organization with an annual budget not exceeding $250,000 to supply its annual IRS nonprofit filing and an accountant's review each year to the state employee charitable campaign. A charitable organization with an annual budget exceeding $250,000 would have to undergo a full audit each year.

The bill would take effect September 1, 2013.

SUPPORTERS SAY: HB 2252 appropriately would allow more smaller charities to be reviewed by a certified public accountant rather than undergoing a full audit, in order to participate in the state employee charitable campaign. This could represent a savings of up to $5,000, allowing these charities to devote more resources toward their core missions and programs. During the 2012

state employee charitable campaign, 32 statewide charities would have benefitted from the bill's increase of the threshold dollar amount.

The smaller charities, in submitting their annual IRS report and undergoing an accountant's review, still would be subject to accountability. Larger charities have diverse revenue streams, so it is appropriate to require a full audit of these charities each year.

OPPONENTS SAY:

No apparent opposition.

SUBJECT: Adjusting the window for filing suit related to discrimination in pay

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 8 ayes — J. Davis, Bell, Y. Davis, Isaac, Murphy, Perez, E. Rodriguez, Workman

0 nays

1 absent — Vo

WITNESSES: For — Jason Smith, Texas Employment Lawyers Association; (*Registered, but did not testify*: Rene Lara, Texas AFL-CIO; Ted Melina Raab, Texas AFT)

Against — Kathy Barber, NFIB Texas; (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas)

On — Boone Fields, Texas Workforce Commission

BACKGROUND: Labor Code, sec. 21.202 requires that lawsuits for employment discrimination, including equal-pay lawsuits, be brought within 180 days of the alleged instance of discrimination. Labor Code, sec. 21.258 limits the award of back pay in a successful employment discrimination case to two years from the date the lawsuit is filed.

DIGEST: HB 950 would amend Labor Code, sec. 21.202 so that, with respect to a case involving a discriminatory compensation decision, an unlawful employment practice would be deemed to have occurred each time:

- a discriminatory compensation decision was adopted;
- an individual became subject to a discriminatory compensation decision; or
- an individual was adversely affected by application of a discriminatory compensation decision or practice, including each time wages, benefits, or other compensation affected by the decision were paid.

The bill would also amend Labor Code, sec. 21.258 to stipulate that for the maximum two years of back pay to apply to a case triggered by an unlawful employment practice, unlawful practices made within the 180-day period for filing a lawsuit would have to be similar or related to the unlawful practices with regard to the discrimination in wage payments made outside of the filing period.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

HB 950 would place Texas at the forefront of establishing a policy forbidding discrimination by conforming state law to the new federal standard. In 2009, the Lilly Ledbetter Fair Pay Act was enacted, which amended federal law so that an instance of discrimination occurs each time wages, which relate to a past discriminatory compensation decision, are paid. Since the *Prairie View A&M v. Chatha* decision by the Texas Supreme Court in 2012, state law has been interpreted to not allow a suit to be brought outside the 180-day window following the original pay decision. With HB 950, Texas law appropriately would mirror federal law in this regard.

Currently in Texas, if an employee does not find out about a discriminatory pay decision within 180 days, he or she has no recourse in state court. Instead, employees and employers are forced to bring and defend such cases in federal court. In addition to being less expensive than federal court, state courts also allow speedier resolution. By stipulating that the statute of limitations would begin each time an employee received wages as the result of a discriminatory practice, HB 950 would allow more of these claims to be settled in state court.

Pay equity is a serious concern nationally and in Texas. A 2010 National Committee on Pay Equity study found that women on average make 77.4 percent of the amount men earn. The bill would allow more women access to state court to help reverse this problem.

The bill would limit the back pay that an employee could recover to the two years prior to filing the complaint. So even if an employer made a discriminatory decision 10 years ago, employees could sue for only two years of back pay.

OPPONENTS SAY:

If Texas adopted the federal standard for when pay inequality cases could be brought, it would effectively do away with the current statute of limitations. The change would create the possibility of an unlawful practice occurring each time wages were paid. A pension check also could be included if it were discovered that there had been a discriminatory decision.

The change proposed by HB 950 would open employers up to significant liability. For example, even if a discriminatory decision were made 10 years ago, the employee still would be able to sue for the past decision. This could be the case even if the original bad decision was made by a manager no longer employed at the company. In addition, employees currently have ample opportunity to bring suit at the federal level.

NOTES:

The identical companion, SB 248 by Davis, was reported favorably by the Senate Economic Development Committee on March 27 and placed on the Senate Intent Calendar.

SUBJECT: Creating Texas Task Force 1 Type 3 in the Rio Grande Valley

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 7 ayes — Pickett, Fletcher, Dale, Flynn, Kleinschmidt, Lavender, Simmons

0 nays

2 absent — Cortez, Sheets

WITNESSES: For — Shawn Snider, Rio Grande Valley Regional Response Group and Edinburg Fire Department, (*Registered, but did not testify:* Lon Craft, Texas Municipal Police Association)

Against — None

On — Nim Kidd, Texas Department of Public Safety-DEM; Billy Parker and Gary Sera, Texas A&M Engineering Extension Service

BACKGROUND: Education Code, sec. 88.302, establishes Texas Task Force 1, an urban and water search and rescue team capable of national deployment. Task Force 1 is based in College Station and is administratively attached to the Texas A&M Extension Service. It is under the command of the Governor's Division of Emergency Management. Task Force 1 is made up of more than 540 emergency response personnel from 68 organizations and departments across the state. It consists of three deployable 70-member teams divided into five components: command, rescue, medical, logistics planning, and search.

DIGEST: CSHB 1090 would create Texas Task Force 1 Type 3. It would be a regional version of Task Force 1 and would be headquartered in the Rio Grande Valley. Task Force 1 Type 3 would operate, train, respond, and function under Texas Task Force 1.

Its training and assistance capabilities would be substantially equivalent to the training and assistance capabilities of Task Force 1. Task Force 1 Type 3 would work in the areas of building collapse, search and rescue, swift

water rescue, hazardous material response, public works strike team response, heavy transportation extrication, public safety, and others.

The members of Texas Task Force 1 Type 3 would be responsible for any costs and expenses related to the operation, training, and equipment of the task force, including the procurement and maintenance of equipment and supplies. These members could be reimbursed for their expenses in the same manner as members of the statewide Texas Task Force 1.

CSHB 1090 would amend the state's workers' compensation statute to extend coverage to Texas Task Force 1 Type 3 members.

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, 2013.

SUPPORTERS SAY:

CSHB 1090 would locate a regional response search-and-rescue task force in the Rio Grande Valley, which is the area of Texas most vulnerable to hurricanes. The Valley is too far removed from the rest of the state to fully count on assistance from Texas Task Force 1 in times of emergency, nor can it fully contribute to task force missions. The Valley's combination of low-lying areas and flood prone highways means it should have its own task force to deal with emergency search and rescue in the event it is cut off from the rest of the state.

According to the Legislative Budget Board, CSHB 1090 would have no cost to the state. Under HB 1090, local governmental members of Texas Task Force 1 Type 3 would be responsible for any costs and expenses related to its operation and training. These members would be eligible for reimbursements if state or federal emergency disaster funds were issued to help with any particular response.

CSHB 1090 would confer a number of organizational benefits that would not be available without the creation of this regional response unit. Its presence would create a clear and formal channel for interagency cooperation in the Valley, which would help consolidate and formalize existing personnel and resource-sharing agreements. In addition, the bill would place this regional organization within the larger statewide structure, finally allowing the Valley to efficiently contribute emergency response resources to the rest of the state in a time of need. Finally, by being part of the larger, statewide task force, Texas Task Force 1 Type 3

would have better access to coordinated training opportunities that could otherwise be unavailable.

Unlike other far-flung areas of the state, the Rio Grande Valley's population is rapidly growing. Texas should deploy resources where they are most needed, and the Valley's population boom combined with its vulnerable geography make this region the best choice for the establishment of a regional emergency response task force.

OPPONENTS SAY:

HB 1090 is unnecessary and simply would create the title of Texas Task Force 1 Type 3. The public safety and emergency response agencies in the Rio Grande Valley already have access to federal emergency disaster training funds, including Federal Emergency Management Agency grants. Existing emergency response agencies already may train with Texas Task Force 1 in College Station.

OTHER OPPONENTS SAY:

The bill should establish regional task forces in other remote areas of the state, not just the Rio Grande Valley. Texas Task Force 1 members are required to be ready to deploy with six hours' notice. Currently, agencies from the Panhandle, far West Texas, and the Rio Grande Valley cannot mobilize within that time frame because they are too far removed from the rest of the state. If it makes sense to base and train a regional task force in the Rio Grande Valley, it would be prudent to follow suit in other parts of the state.

NOTES:

The committee substitute differs from the bill as filed in that it would hold the local governmental members of Texas Task Force 1 Region 3 Rio Grande Valley responsible for any cost or expense related to the operation, training, and equipment of the task force and would make these members eligible for reimbursement.

SUBJECT: Allowing alcohol advertising on buses and certain vehicles for hire

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez, Miles

0 nays

2 absent — Price, S. Thompson

WITNESSES: For — Kris Bailey, Electric Cab of Austin; (*Registered, but did not testify:* John Deleon; Chris Nielsen; Sam Orellana; David Ring, Tim Turnipseed)

Against — None

On — (*Registered, but did not testify:* Carolyn Beck, Texas Alcoholic Beverages Commission)

BACKGROUND: Alcoholic Beverage Code, sec. 108.52 governs permissible outdoor advertising of alcoholic beverages and businesses engaged in the sale, manufacture, or distribution of such beverages.

DIGEST: CSHB 1917 would allow the placement of outdoor advertising for alcoholic beverages or for businesses engaged in the manufacture, sale, or distribution of alcoholic beverages on the outside of public transportation passenger vehicles or vehicles for hire, including vans, taxis, limousines, pedicabs, and rickshaws.

The bill would take immediate effect if passed by two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: CSHB 1917 would provide a much needed source of advertising revenue for businesses such as taxi and pedicab operators while benefitting public safety in the process.

Taxi, pedicab, and rickshaw operators rely heavily on advertising dollars to support their livelihoods, but current law prohibits the placement of

alcohol-related advertising on such vehicles. CSHB 1917 would benefit these hardworking, small business people by allowing them to collect revenue from the advertisement of alcoholic beverages on their vehicles in addition to the money they collect in passenger fares. The bill also would allow municipalities to profit from the placement of similar ads on the exteriors of city buses and other public transportation vehicles.

By providing a possible source of extra income to the operators of vehicles for hire, the bill would allow taxi, pedicab, and rickshaw operators to keep their fares low, extend service later into the night, and cover a greater geographical area, all of which could create alternatives for consumers of alcoholic beverages who might otherwise present a danger to themselves and others by driving after drinking. To the extent outdoor alcoholic beverage advertising subsidized the operation of such vehicles, the bill could result in real improvements to public safety. CSHB 1917 also would allow municipalities to place ads from businesses in the alcoholic beverage industry on public buses encouraging consumers to "drink responsibly," which would further reinforce the message to alcohol consumers that drinking and driving do not mix.

The bill also would benefit the alcoholic beverage industry as a whole, including bars, restaurants, distributors, and manufacturers, by allowing advertising for their products to be seen in more places. Increased sales of these products could stimulate the local economy, increase tax revenue, and create more jobs in the industry.

OPPONENTS SAY:

By allowing the placement of alcohol advertisements on buses, taxis, and similar vehicles, CSHB 1917 would do more harm than good with regard to public safety. The abuse of alcohol is a public health concern associated with many types of detrimental effects. The state should not actively encourage demand for alcoholic beverages, which previous legislatures have recognized by adding limitations on alcohol advertising to the Alcoholic Beverage Code. Advertisements on public transportation and vehicles for hire would send the message that the state implicitly sanctions drinking. Some studies demonstrate these ads may particularly attract the attention of youth passengers, which could contribute to underage drinking and all of the negative consequences that follow. Public transportation and vehicles for hire should seek ad revenue from sources other than industries that directly contribute to public health problems.

It is not clear what effect CSHB 1917 would have on the ability of

municipalities to adopt ordinances that would locally prohibit the display of alcohol advertising on public transportation and vehicles for hire. Several sections of the Alcoholic Beverage Code that generally allow the advertisement of alcoholic beverages in Texas also permit local governments to prohibit the display of such advertising in their communities, which is appropriate in dry areas of the state. For example, Alcoholic Beverage Code, sec. 108.55 allows a municipality to prohibit by ordinance the deployment of billboards, electric signs, or any outdoor advertising of alcohol, and sec. 108.52(g)(2) prevents ads for alcohol from appearing on benches in an area where the sale of alcohol is prohibited by law. The impact CSHB 1917 would have on the ability of local governments to enact similar laws banning the display of alcohol advertisements on public transportation and vehicles for hire is unknown.

NOTES:

The committee substitute differs from the bill as filed in that it removes language from the original that would have confined vehicles carrying alcoholic beverage advertisements to the entertainment districts of municipalities.

SUBJECT: Adding a pharmacy technician to the Texas State Board of Pharmacy

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Kolkhorst, Naishtat, Collier, Cortez, S. Davis, Guerra, S. King, Laubenberg, J.D. Sheffield, Zedler

0 nays

1 absent — Coleman

WITNESSES: For — Lisa McCartney, Pharmacy Technician Educators Council; Bradley Miller, Texas Pharmacy Association; (*Registered, but did not testify:* Joel Ballew, Texas Health Resources; Joe DaSilva, Texas Pharmacy Association; Paul Davis, Texas Society of Health System Pharmacists; Cynthia Glover, Texas Pharmacy Association)

Against — None

On — Gay Dodson, Texas State Board of Pharmacy

BACKGROUND: Occupations Code, ch. 552 outlines the composition, qualifications, and governing rules of the Texas State Board of Pharmacy (TSBP), the state agency responsible for the licensure and discipline of pharmacists, pharmacy technicians, and pharmacies.

Sec. 552.001 requires that the board include six pharmacists and three members representing the public. Sec. 552.010(a) requires the board meet every four months to transact board business and twice a year to examine applicants.

DIGEST: HB 2087 would expand the Texas State Board of Pharmacy to 11 members by adding one pharmacy technician and a pharmacist.

The bill would make eligible for the board acting Texas pharmacy technicians who were in good standing, had been registered as a pharmacy technician for five years preceding appointment, and were Texas residents. No changes would be made to pharmacist board qualifications.

The bill would remove the requirement that the board meet twice a year to consider applicants.

As soon as practicable after the bill's effective date, the governor would appoint to the board a pharmacy technician to a term ending August 31, 2019 and a pharmacist to a term ending August 31, 2017.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

HB 2087 would give a voice to pharmacy technicians and improve pharmacies' delivery of health care.

Pharmacy technicians would gain needed representation on the Texas State Board of Pharmacists. As the role of pharmacy technicians has become more complex and professionalized, the need has increased for their inclusion in the regulatory process. A technician on the board would increase the TSBP's responsiveness to pharmacy technicians' concerns. With Texas' 53,000 pharmacy technicians more than double the number of pharmacists, reserving one of the 11 board positions for a technician would be both fair and pragmatic. Adding a seventh pharmacist to the board would prevent pharmacists' representation from being noticeably diluted.

Pharmacy technician representation would improve pharmacies' quality of care by improving coordination between pharmacists and pharmacy technicians and maximizing the services each could provide in the pharmacy setting. The technician board member also could advise the TSBP on pharmacy technician best practices that could be disseminated by the board.

The bill would not increase governmental spending or size. The cost of adding two members to the TSBP is about $15,000 per year. Board members receive only per diem for each day they engage in board business and a reimbursement for expenses. This small cost could be offset by a minor increase in registration and certification fees that could be spread over the board's 80,000 members. While HB 2087 would increase the board's size, it would reduce its yearly meetings by one-third, would not grant any more regulatory power, and in the long-term could prevent governmental expansion by making it unnecessary to create a separate board for technicians in the future.

OPPONENTS SAY:

HB 2087 would be an unnecessary expansion of government. There is no evidence that the Texas State Board of Pharmacists does not adequately represent the interests of pharmacy technicians. TSBP's mission, to promote public health through quality pharmaceutical care, already incentivizes the board to include all stakeholders' interests in its deliberations. Pharmacy technicians are able to provide input to the board. Adding one technician to the TSBP would not have a notable impact on its decision-making and would not warrant any increased spending or change in statute.

NOTES:

The companion bill, SB 500 by Van de Putte, was reported favorably from the House Public Health Committee on April 19.

SUBJECT: Regulation of real estate inspectors

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 7 ayes — Smith, Kuempel, Geren, Gooden, Guillen, Gutierrez, Miles

0 nays

2 absent — Price, S. Thompson

WITNESSES: For — Dianna Burley, Texas Association of Real Estate Inspectors; Jay Fuller, American Society of Home Inspectors; Brad Phillips, Texas Real Estate Commission (*Registered, but did not testify*: Daniel Gonzalez and Chelsey Thomas, Texas Association of Realtors)

Against — Clay Collins, Texas Professional Real Estate Inspectors Association

On — Douglas Oldmixon, Texas Real Estate Commission

BACKGROUND: The Texas Real Estate Commission oversees the licensing, conduct, and educational and insurance requirements of individuals conducting real estate inspections under the authority of Occupations Code, ch. 1102.

DIGEST: CSHB 2911 would change the regulation of real estate inspectors. It would allow an inspector to obtain a bond or security in lieu of liability insurance, require background checks and felony disclosures as part of the licensing process, change training requirements, and eliminate the real estate inspection recovery fund, among other provisions.

Background checks and felony disclosures. CSHB 2911 would require applicants for new or renewed real estate inspector licenses to submit a complete and clear set of fingerprints to the Real Estate Commission or the Department of Public Safety (DPS) for the purpose of performing state and national criminal background checks. If DPS conducted the background check, it could collect from applicants the costs incurred.

During the renewal process, licensees would have to disclose any felony

convictions, guilty pleas and pleas of no contest. They would be required to disclose this even if an order had granted community supervision suspending the sentence.

Training requirements. CSHB 2911 would increase the minimum number of additional hours of classroom training for professional real estate inspectors from 30 hours to 40 hours, while removing the requirement that eight classroom hours be related to the study of standards of practice, legal issues, and ethics.

The bill would require that real estate inspector and professional inspector applicants who were reapplying for a license within 24 months of having allowed their licenses to expire complete all continuing education requirements that would have been required if they had renewed their licenses before they expired.

The bill would remove the word "classroom" from the description of core real estate inspection classes as it relates to the commission's alternative certification program.

Insurance or bonding. The bill would specify the amount of aggregate liability insurance required for an inspector at $100,000. It would require that the insurance be obtained from an insurer authorized to engage in the business of providing insurance to protect the public specifically against violations of Occupations Code, ch. 1102, subch. G, which covers prohibited acts.

CSHB 2911 would provide that in lieu of liability insurance, an inspector could opt to obtain bond or other security in the amount of $100,000 to provide surety against violations of Occupations Code, ch. 1102, subch. G. The bill would describe the bond posting requirements and provide that the security be convertible to cash by the commission for the benefit of a person contracting with an inspector who violated subch. G.

Elimination of the real estate inspection recovery fund. CSHB 2911 would repeal the statute authorizing the real estate inspection recovery fund and establishing a mechanism to eliminate it. The commission would transfer $300,000 to general revenue by August 31, 2015, and by November 1, 2017, it would determine the remaining liability of the fund based on any penalty claims. After determining liability, the commission would refund to each eligible inspector a portion of the amount in excess

of the remaining liability, not to exceed $100 per person. The commission would then transfer any remaining funds to general revenue.

Deadline for completion of licensing. The bill would modify the requirements for a license applicant who had failed the license examination three times to allow the commission to prescribe additional training.

Other provisions and effective date. CSHB 2911 would:

- add language describing the type of information provided to the commission for an address change;
- remove statutory language describing how notice of license expiration must be provided to the licensee;
- establish penalties for late license renewals for licenses renewed within six months of expiration.
- remove provisions that describe the manner in which fees are paid; and
- remove the requirement that fees associated with the real estate inspection recovery fund be renewed annually.

New provisions related to criminal background checks, changes in licensing requirements, financial responsibility, continuing education, and payment of administrative penalties into the real estate inspection fund would apply only to license applications, renewals, and payments received on or after the effective date.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2911 would increase professional standards for those conducting real estate inspections. It is largely a housekeeping measure that would bring real estate inspection licensees in line with other professionals licensed by the Real Estate Commission.

Background checks and felony disclosures. CSHB 2911 would enhance public safety and protect property. Criminal background checks and the disclosure of felony convictions are common practices in Texas law for any professional entering an individual's home, or working with children or at-risk populations. Real estate agents and brokers are required to undergo criminal background checks, and inspectors should be held to the same standard.

The Real Estate Commission administers its existing statutes and those governing felony convictions of professionals under a set of rules established to implement Occupations Code, ch. 53, which concerns the consequences of criminal conviction. In determining whether to grant or renew a license, the commission examines a variety of factors, including the nature and extent of the crime, the rehabilitation of the individual, and the length of time since the crime was committed. This helps ensure that individuals are not improperly kept out of an industry for nonviolent crimes or those unrelated to the profession that were committed well in the past.

When real estate agents and brokers first underwent criminal background checks, very few were denied licenses — and those who were primarily fell into a group that was involved in fraud and harm against individuals. Fingerprinting and background checks are not expensive, ranging between $30 and $40.

Insurance and bonding. CSHB 2911 would allow home inspectors to obtain bonds or other securities as an alternative to obtaining liability insurance against errors and omissions, which is a common practice in other states. This provision would ensure that some form of insurance or bonds protected both inspectors and consumers of home inspections.

Elimination of the real estate inspection recovery fund. CSHB 2911 would wind down the real estate inspection recovery fund, which is no longer needed now that inspectors obtain insurance. There have been no claims against the fund since liability insurance became mandatory in 2007. Proceeds from the elimination of the fund would benefit general revenue and individuals who paid into the fund. The private marketplace, not a state agency, is the appropriate setting to address claims against individual inspectors.

Training. Although CSHB 2911 would remove training requirements related to standards of practice and ethics, the commission intends to adopt training standards that include ethics and standards of practice tailored specifically to Texas home inspectors.

Deadline for completion of licensing. CSHB 2911 would allow the Real Estate Commission to enhance, by rule, the educational requirements of individuals having difficulty passing licensure exams. This would help

ensure that an individual who needed additional training to pass the required exams would receive it, instead of merely forcing an individual to start over again without addressing the underlying issue.

OPPONENTS SAY:

Background checks and felony disclosures. CSHB 2911 would penalize individuals who committed a crime in the past but pose no current threat to society. While the commission can claim that they are not trying to deny licenses to individuals who committed nonviolent crimes well in past, there is no guarantee that the commission might not adopt stricter rules in the future that drive inspectors out of business. A decrease in the number of individuals conducting home inspections could lead to higher prices for home inspections.

Many of the vocational programs at the Texas Department of Criminal Justice (TDCJ) are aimed at tasks that normally would be covered in the training of home inspectors, such as plumbing, electrical work, and construction. Background checks could have the unintended consequence of creating a barrier to entry into a profession uniquely suited to the individuals who have undergone TDCJ training and pose no threat to society.

Insurance and bonding. The state made a mistake when it required inspectors to obtain liability insurance in 2007. Providing the option for bonds as way to meet the financial responsibility liability requirement would be even more expensive and cumbersome than obtaining liability insurance. CSHB 2911 should eliminate the requirement for liability insurance and bonds. Instead, the state should continue the real estate inspection recovery fund and use that as the mechanism to pay damages associated with errors and omissions.

NOTES:

A similar companion bill, SB 1296 by Taylor, was passed by the Senate by a vote of 31-0 on April 18.

The committee substitute differs from the introduced version primarily through the inclusion of nonsubstantive drafting changes. CSHB 2911 would change from August 31, 2017 to November 1, 2017 the date by which the Real Estate Commission would have to determine the remaining liability in the real estate inspection recovery fund.

SUBJECT: Revising education research centers' oversight and operating agreements

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 7 ayes — Branch, Patrick, Clardy, Darby, Howard, Murphy, Raney

0 nays

2 absent — Alonzo, Martinez

WITNESSES: For — Susan Dawson, E3 Alliance - P16 Council of Central Texas; (*Registered, but did not testify:* Nelson Salinas, Texas Association of Business)

Against — None

On — (*Registered, but did not testify:* Celeste Alexander, University of Texas at Austin; Susan Brown, Texas Higher Education Coordinating Board)

BACKGROUND: Education Code, sec. 1.005 creates education research centers (ERCs), which gather data on students and other participants in programs administered by the Texas Education Agency (TEA), the Texas Higher Education Coordinating Board, and the Texas Workforce Commission (TWC). These centers exist at Texas institutions of higher learning. The data gathered are open to professional researchers who conduct longitudinal studies on the Texas education system and its outcomes.

ERCs operate under an agreement between the commissioner of education, the coordinating board, and the governing body of the higher education institution that hosts it. The commissioner of education and the coordinating board provide direct, joint supervision of ERCs and their research efforts. The commissioner of education and the coordinating board may require an ERC to conduct research projects considered particularly important to the state. ERCs are funded through gifts, grants, and fees charged for the use of a center's research, resources, or facilities. Currently, there are two ERCs, one at UT-Austin and one at UT-Dallas.

The Family Educational Rights and Privacy Act (FERPA) is established

under 20 U.S.C. §1232g; 34 CFR Part 99. FERPA protects the privacy of student education records. It applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA rules apply to ERC use of student data.

DIGEST:

CSHB 2103 would make several changes to the oversight and operations of ERCs.

Establishment and operation of ERCs. The coordinating board would be required to establish not more than three ERCs. The bill would allow a consortium of higher education institutions to form an ERC. The coordinating board would solicit requests for proposals from appropriate institutions to establish ERCs and would evaluate those proposals based on criteria adopted by the coordinating board.

ERCs would be operated under an agreement between the coordinating board and the governing body of each participating institution. The agreement would provide for the operation of the ERC for a 10-year period, as long as it met contractual and legal requirements for its operation.

The bill would remove the commissioner of education from the direct oversight of ERCs and would remove the commissioner's power to require ERCs to perform particular studies. Any cooperating agency could request that an ERC conduct a study if the agency provided sufficient funds to finance it.

ERC use of shared student data. In conducting studies, an ERC could use student data and educator data, including FERPA protected, confidential data, that the center collected from any of the following: TEA, the coordinating board, TWC, or any other agency or institution of higher education, school district, a provider of services to these institutions, or any entity explicitly named in an approved ERC research project.

ERCs would comply with applicable state and federal law on confidentiality of student information. ERCs would provide researchers access to student data only through secure methods and would require researchers to sign confidentiality agreements. Finally, ERCs would conduct regular security audits and report the results to the coordinating board and an ERC research advisory board established by the bill to review ERC studies or evaluation proposals.

CSHB 2103 would require cooperating agencies to execute agreements for the sharing of data for the purpose of facilitating the studies or evaluations at ERCs. Under these agreements, each cooperating agency would share appropriate data collected by the agency for the preceding 20 years. A cooperating agency would update this information at least annually.

The bill would remove certain notification requirements to the governor, the Legislative Budget Board, and the educational institution hosting the ERC that particular study was being undertaken.

Student data storage. The coordinating board would store the data shared with it by cooperating agencies in a repository called the "P-20/Workforce Data Repository." The board would store other data in the repository, including data from college admission tests and the National Student Clearinghouse. It would use appropriate data matching and confidentiality procedures as approved by the cooperating agencies.

Data sharing agreements with other states. The coordinating board could enter into data sharing agreements with local agencies or organizations that provide educational services or with other relevant organizations of another state. The coordinating board would give priority to those states that sent the most college students to Texas or that received the most college students from here. These agreements would be reviewed by the U.S. Department of Education.

ERC research advisory board. The bill would establish an ERC research advisory board to review ERC studies or evaluation proposals to ensure appropriate data use. Each study or evaluation conducted by an ERC would have to be approved in advance by majority vote of the advisory board. ERCs could submit proposals from another educational institution, a graduate student, a P-16 Council, or another researcher proposing research to benefit education in Texas. In determining whether to approve a proposed study, the advisory board would have to:

- consider the potential of the research to benefit education in Texas;
- require each ERC director or designee to review and approve the proposed research design and methods; and
- consider the extent to which the data required to complete the proposed study or evaluation was not readily available from other data sources.

The advisory board would be chaired and maintained by the commissioner of higher education. Its membership would include:

- a representative of the coordinating board, designated by the commissioner of higher education;
- a representative of TEA, designated by the education commissioner;
- a representative of TWC, designated by the workforce commissioner;
- the director of each ERC or the director's designee; and
- a representative of preschool, elementary, or secondary education.

The board would meet at least quarterly. It would not be subject to the Open Meetings Act or Open Records Act.

Other provisions. CSHB 2103 would change the funding method for ERCs from "fees" to "charges" that would be imposed for the use of a center's research, resources, or facilities.

The bill would define "cooperating agencies" to mean TEA, the coordinating board, and TWC.

CSHB 2103 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, 2013.

SUPPORTERS SAY:

CSHB 2103 would reform the operations and governance of education research centers (ERCs) to increase their output and their compliance with FERPA laws and best practices. By allowing researchers to conduct longitudinal studies of student outcomes, ERCs help policy makers create new approaches or tweak existing ones to ensure the Texas education system is meeting Texas' workforce needs.

CSHB 2103 would centralize oversight of ERCs with the Texas Higher Education Coordinating Board to better ensure the completion of approved projects and the protection of data. Current law, which jointly vests ERC project oversight with the coordinating board and TEA, has proven unworkable. By removing the TEA from project oversight and approval, CSHB 2103 would streamline decision making, which would help improve FERPA compliance.

By creating the coordinating board-led advisory board and requiring it to meet at least quarterly, the bill would ensure proposed research projects were vetted in a timely manner. Further, by vesting decision-making power in an advisory board made up of the stakeholders, the bill would free the research process from the infighting and inertia that could occur under the joint leadership of TEA and the coordinating board.

CSHB 2103 would place a strong emphasis on data security. It would require that all data sharing took place under agreements requiring compliance with all applicable state and federal privacy statutes. Further, the bill would require ERCs to conduct periodic audits to ensure data security, the results of which would be shared with the coordinating board and the advisory board.

CSHB 2103 would improve the quality of student data research studies by allowing ERCs to use supplemental data, which are relevant data on student outcomes that the state may not already have. For instance, TEA currently does not track which pre-kindergarten programs, if any, a child attends, but these data are available and easily integrated into an ERC database. Under the bill, researchers would be able to use these data to measure the effectiveness of various pre-K programs.

The bill would not endanger the U.S. Department of Education's approval of these programs because it would not undermine the state's control over confidential student data. Federal approval is largely based on a program's ability to comply with FERPA regulations. When ERCs were first established, federal evaluators praised the oversight, tracking, and controls that were implemented by state agencies to ensure the confidentiality of student data. CSHB 2103 would only strengthen the confidentiality of these data. In fact the Department of Education's Privacy Technical Assistance Center has vetted the bill and approved its privacy protections for student data.

CSHB 2103 would not endanger student privacy by allowing Texas institutions to directly share data with institutions in other states. The key to FERPA compliance is control and security of student data. CSHB 2103 would ensure this through the operating and data sharing agreements that the bill would require cooperating agencies and the ERCs to make before any data were ever shared.

The bill would not threaten the ability of state agencies that provide data to charge ERCs for data production and packaging. While the bill would remove the term "fees" and replace it with "charges," the purpose would be to help institutions of higher education avoid rules that control the setting of fees. State agencies still would be able to receive reimbursement under the terms of their operating agreements.

CSHB 2103 would properly exempt the proposed advisory board from the open records and open meetings requirements because the board deals with matters concerning federally protected confidential student data. The duty to protect the sanctity of the data rises to the point where it would be appropriate to exempt the proposed board from these important acts.

OPPONENTS SAY:

CSHB 2103 would try to fix a system that already works. The bill's major change, removing TEA from joint oversight with the coordinating board over the ERCs, would imperil TEA's ability to monitor and safeguard its own student data. When the U.S. Department of Education granted Texas permission to create ERCs, it praised the joint oversight because it helped ensure direct oversight of student data by TEA and the coordinating board. Removing TEA might endanger federal approval of the program. The bill also could threaten the ability of state agencies that provide data to charge ERCs for their handling and packaging.

Even if there has been a history of trouble between TEA and the coordinating board, there is a new commissioner of education and new department heads who oversee ERC data and programs. They should be allowed additional time to work with the coordinating board under existing statutes that already enjoy federal approval.

The bill should not exempt the proposed advisory board from open records and open meetings requirements. The principles of accountability safeguarded by these laws are so important that agencies rarely should be exempted from them. Even if the advisory board were considering matters involving confidential student data, it should be doing so only after those data had been stripped of identifying information, such as names, birthdays, and Social Security numbers, which would preclude any need for the board to be exempt from these state laws.

NOTES:

The committee substitute differs from the bill as filed mainly in that it includes specific criteria the advisory board would be required to use when evaluating potential studies.

SUBJECT: TJJD collecting best practices to identify child victims of sex trafficking

COMMITTEE: Corrections — favorable, without amendment

VOTE: 7 ayes — Parker, White, Allen, Riddle, Rose, J.D. Sheffield, Toth

0 nays

WITNESSES: For — Jennifer Carreon, Texas Criminal Justice Coalition; John Moran, Bexar County Juvenile Probation Department; (*Registered, but did not testify*: Ray Allen, Texas Probation Association; Yannis Banks, Texas NAACP; Diana Martinez, TexProtects, The Texas Association for the Protection of Children; Jason Sabo, Children at Risk; Justin Wood, Harris County District Attorney's Office)

Against — None

On — Mike Griffiths, Texas Juvenile Justice Department

DIGEST: HB 3497 would require the Texas Juvenile Justice Department (TJJD) to evaluate local juvenile probation departments' practices and screening procedures for the early identification of juvenile sex trafficking victims. The purpose of the evaluation would be to develop a set of best practices that could be used by juvenile probation departments to improve their ability to identify juveniles who were victims of sex trafficking.

The best practices could include:

- examining a juvenile's history of referral to juvenile probation departments, including a history of running away from home or being adjudicated for previous offenses;
- making inquiries into a juvenile's history of sex abuse;
- determining a juvenile's need for services, including rape crisis or other counseling; and
- asking the juvenile questions to determine if the juvenile was at high risk of being a sex trafficking victim.

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

effect September 1, 2013.

SUPPORTERS SAY:

HB 3407 would continue the state's efforts to combat the horrific crime of sex trafficking of children. Texas has been identified as a hub for international human trafficking. In response, the state has enacted numerous laws to combat these crimes, including laws to punish traffickers, protect victims, and establish the state's Human Trafficking Prevention Task Force. HB 3407 would continue these efforts by improving the identification of children who were victims or potential victims of sex trafficking.

Juveniles who are victims of sex trafficking or who are at risk of trafficking may come in contact with juvenile probation departments for issues such as running away or other delinquent conduct. If these juveniles could be identified at that time, it is hoped that the through intervention the crime could be halted or prevented and the juvenile could receive treatment or be referred to other resources.

HB 3407 would help in these efforts by requiring the TJJD to evaluate the screening procedures currently being used by some local juvenile probation departments, develop a set of best practices for identifying these juveniles, and share that information with the state's local juvenile probation departments. Some local departments are active in this area, and evaluating and sharing information about their practices could help other departments and child victims. The information could be especially helpful to departments that were beginning efforts in this area.

The TJJD would be the best entity to gather and disseminate this information because it already works closely with local juvenile departments. The Human Trafficking Prevention Task Force has broad-based duties that do not focus exclusively on juveniles. In addition, the TJJD already has a base of knowledge about the issue. A January 2011 report on alternatives for youth involved in prostitution was compiled by the state's Juvenile Probation Commission, which recently merged with the Texas Youth Commission to form the TJJD.

HB 3407 would not burden the TJJD, which could meet the requirements of the bill without additional resources. According to the Legislative Budget Board, there would be no significant fiscal impact to the state. TJJD could easily integrate the requirements of the bill with its other duties and without incurring significant costs because information already

flows between the agency and local departments. The information TJJD developed under the bill could be disseminated easily and inexpensively through the agency's website.

The bill would not place a burden on any local departments because there is no mandate that local departments adopt any specific policy or take any action. Departments would continue to have the flexibility to establish their own practices tailored to their unique circumstances.

OPPONENTS SAY:

It might be difficult for the TJJD to meet the requirement of HB 3407 without additional resources. The newly formed agency still is merging the work of the two previous agencies that handled juvenile offenders. The proposed fiscal 2014-15 state budget would reduce appropriations for the agency, making it challenging to take on additional, unfunded tasks.

OTHER OPPONENTS SAY:

HB 3407 would not go far enough. It should require that local juvenile probation departments adopt best practices identified by the TJJD.

The state's Human Trafficking Prevention Task Force might be a better entity to gather and disseminate information on identifying juvenile sex trafficking victims. The TJJD has numerous other duties, and the task force is focused on trafficking.

NOTES:

The identical companion, SB 1520 by Van de Putte, has been referred to the Senate Criminal Justice Committee.

SUBJECT: Civil remedies for a municipal floodplain violation

COMMITTEE: Urban Affairs — committee substitute recommended

VOTE: 6 ayes — Dutton, Alvarado, Elkins, Leach, J. Rodriguez, Sanford

0 nays

1 absent — Anchia

WITNESSES: For — Majed Al-Ghafry and Savita Rai, City of San Antonio; Wes Birdwell, Texas Floodplain Management Association; J. Frank Davis; Ernie Garcia; Steve Graham, San Antonio River Authority; (*Registered, but did not testify:* John Cantu and Jeff Coyle, City of San Antonio; Seth Mitchell, Bexar County; T.J. Patterson, City of Fort Worth; Richard Perez, The Greater San Antonio Chamber of Commerce)

Against — None

BACKGROUND: Local Government Code, sec. 54.012, allows municipalities to bring a civil action for the enforcement of health and safety ordinances on:

- public safety, health, or fire safety relating to a building;
- land zoning;
- deteriorated structures or improvements;
- accumulation of matter that creates breeding or living places for insects and rodents;
- businesses related to sexual stimulation or gratification; and
- certain pollutants; and
- implementing civil penalties for violations of health and safety ordinances classified as a class C misdemeanor (maximum fine of $500).

DIGEST: CSHB 1554 would allow a municipality to file civil action to resolve the violation of an ordinance relating to floodplain control and administration, including an ordinance regulating the placement of a structure, fill, or other materials in a designated floodplain.

In addition to any necessary and reasonable actions authorized by law, a municipality could bring a property into compliance with a floodplain ordinance by doing the work necessary to repair, remove, or demolish a structure, fill, or other material that was illegally placed in the area designated as a floodplain. The municipality could file a lien on the property for the assessed costs of the work done to abate the violation that would accrue interest at an annual rate of 10 percent until the municipality was paid.

A municipality could file a lien under CSHB 1554 only if the owner of the property failed to comply with the floodplain ordinance after the municipality gave the owner reasonable notice and opportunity to comply.

The lien filed under CSHB 1554 would take priority over other liens on the property if the municipality filed written notice of the lien with the county clerk of the county in which the property was located. The lien would be a privileged lien subordinate only to tax liens and liens for street improvements. The bill would require notice of the lien to be recorded stating the name of each property owner, if known, the legal description of the property, and the amount due to the municipality.

The bill would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 1554 would allow cities to better enforce floodplain ordinances. Currently, a city can only assess a fine of up to $500 for a floodplain violation as a class C misdemeanor offense. Under municipal court, the judge cannot order a property owner to remove infill violating floodplain ordinances. If a city files a lien against a property under a city ordinance, the city would not necessarily have the ability to foreclose on the lien if the property owner chose not to pay it.

CSHB 1554 would give municipalities the authority to stop infill in floodplains immediately instead of waiting until after the damage had been done. The bill would allow a district judge under Local Government Code, ch. 54 to order a property owner to remove floodplain infill and order a fine for every day the property owner did not comply with floodplain ordinances.

The current $500 fine for a class C misdemeanor does not cover all the costs a city may incur. When property owners and developers illegally fill in floodplains, they alter the watershed, which causes flood waters to

exceed expected levels, endangering the lives of those living nearby. Violations of city floodplain ordinances can cause millions of dollars in property damage, environmental assessment, clean-up, and other costs for a city. Floodplain violations are common, with the City of San Antonio having investigated more than 200 cases of illegal fill in recent years.

The bill would give municipalities the same civil action authority over floodplain ordinance violations that they have over many other ordinance violations. Authorizing cities to place a lien on properties and to foreclose on the lien under ch. 54 would allow cities to recover costs they otherwise would never recover. CSHB 1554 would give cities the authority to place a lien on a property only if the property owner did not comply with the floodplain ordinance after a city gave them reasonable notice and opportunity to comply.

OPPONENTS SAY:

CSHB 1554 would give municipalities too much power over property owners. The bill does not define how much notice would be considered "reasonable," nor what would constitute the "opportunity" to comply with the ordinance. Current law only requires property owners to receive notice of a lien already placed on their property. CSHB 1554 would create an unreasonable burden for a property owner to prove that they were not in violation before the city placed a lien on the property for whatever costs it assessed to remedy the violation. It amounts to a cease-and-desist order that would contribute to government overreach.

NOTES:

The committee substitute differs from the bill as filed in that it would:

- allow a municipality to file a civil lawsuit to resolve a floodplain ordinance violation;
- define ordinance abatement as "including the repair, removal or demolition of a structure, fill, or other material illegally placed in the area designated as a floodplain";
- remove a provision in the bill as filed that would have allowed a municipality to file suit to foreclose the lien and recover the unpaid costs and interest.

A similar bill, SB 1087 by Campbell, is pending in the Senate Intergovernmental Relations Committee after a hearing on April 10.

SUBJECT: Adding Prairie View A&M to the Research Development Fund

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 9 ayes — Branch, Patrick, Alonzo, Clardy, Darby, Howard, Martinez, Murphy, Raney

0 nays

WITNESSES: For — None

Against — None

On — Corey Bradford, Prairie View A&M University

BACKGROUND: In 2003, the 78th Legislature enacted HB 3526, by Hamric (regular session) to create the Research Development Fund (RDF). The RDF replaced the Texas Excellence and University Research Funds. The RDF distributes funds to eligible institutions under a uniform allocation method based on a three-year average of each institution's restricted research expenditures.

Currently, all general academic teaching institutions are eligible to receive distributions from the RDF, except the University of Texas at Austin, Texas A&M University, and Prairie View A&M.

CSSB 1 currently contains a $65.3 million appropriation to the RDF to be distributed over fiscal 2014-15 to eligible institutions.

DIGEST: HB 870 would add Prairie View A&M to the list of higher education institutions eligible to receive distributions from the Research Development Fund.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY: HB 870 would give Prairie View A&M access to much-needed research

dollars from the Research Development Fund (RDF). Historically, Prairie View A&M was excluded from the fund because it receives distributions, along with UT at Austin and Texas A&M, from the Permanent University Fund (PUF), which makes distributions from the state's return on invested oil and gas royalties. However, UT-Austin and Texas A&M receive additional research dollars from other state funds in which Prairie View A&M does not participate. On top of its PUF funding, UT-Austin received $18.3 million in additional research dollars and Texas A&M received $3 million for each year of the current biennium. Prairie View A&M did not receive additional state research funding beyond its PUF allocations.

Based on current funding formulas, Prairie View A&M would receive $1 million if it were allowed to participate in the RDF, according to the Legislative Budget Board. These dollars would provide funds for individual faculty projects and laboratory and equipment upgrades.

While other RDF institutions would see a slight reduction in their share of RDF funds, it would be small, roughly $23,000 to $31,000 a year. Prairie View A&M's total RDF share would amount to only 2.2 percent to 2.9 percent of the total appropriated amount.

Granting Prairie View A&M access to more than one source of supplemental research funding would fit a precedent. Many of the state's institutions of higher education draw funds from multiple sources. For instance, several institutions participate in both the Texas Research Incentive Program Fund and the National Research University Fund.

Providing Prairie View A&M access to the RDF in addition to the PUF would help it to emerge from its past as an underfunded historically black college. These investments in research and research capacity would contribute to the university growing from a regional institution to a statewide university with national ambitions.

OPPONENTS SAY:

It is inappropriate to grant Prairie View A&M access to the RDF. Historically, institutions of higher education either had access to the generous PUF or they did not. To make up for lack of access to the PUF, the Legislature made appropriations through the RDF to help non-PUF institutions bolster their research efforts. It would be inequitable to other institutions to let Prairie View A&M benefit from both funding systems.

SUBJECT: Exempting public energy aggregators from the franchise tax

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 7 ayes — Hilderbran, Otto, Bohac, Button, Eiland, N. Gonzalez, Strama

0 nays

2 absent — Martinez Fischer, Ritter

WITNESSES: For — (*Registered, but did not testify:* John Greytok, City of Missouri City; Donald Lee, Texas Conference of Urban Counties; Randolph "Randy" Moravec, Texas Coalition for Affordable Power)

Against — None

On — Teresa Bostick and Ed Warren, State Comptroller's Office

BACKGROUND: Local Government Code, sec. 304.001 establishes a process by which a county, municipality, school district, hospital district, or any political subdivision receiving electric service from an entity that has implemented customer choice may join with another to form a corporation to negotiate the purchase of electricity. Each political subdivision entering into such an agreement must first approve articles of incorporation by ordinance or other order.

DIGEST: HB 2684 would exempt from the franchise tax a corporation formed by political subdivisions to purchase electricity.

The bill would take effect January 1, 2014, and would only apply to a franchise tax report due on or after that date.

SUPPORTERS SAY: HB 2684 would be a good governance measure that would reduce unnecessary reporting. Political subdivisions that form a corporation to purchase electricity currently do not pay the franchise tax, as they have no IRS-reportable income under federal law. The comptroller's franchise tax data files show no instances of such political subdivisions that owed the tax.

Because there is no specific language in statute exempting these corporations from franchise tax requirements, they are required to file a report each year showing that no taxes are due. By expressly exempting them from the franchise tax, HB 2684 would ensure that the entities no longer had to file the unnecessary report.

Only tax-exempt political subdivisions are eligible to form these corporations. As a result, the bill would not provide a tax shelter for corporations that otherwise would be liable for the tax.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The identical Senate companion, SB 1580 by Hinojosa, has been referred to the Senate Finance subcommittee on Fiscal Matters.

SUBJECT: Closure of certain beaches for space flight activities

COMMITTEE: Land and Resource Management — committee substitute recommended

VOTE: 9 ayes — Deshotel, Walle, Frank, Goldman, Herrero, Paddie, Parker, Simpson, Springer

0 nays

WITNESSES: For — Carlos Cascos, Cameron County; Lauren Dreyer, Space Exploration Technologies Corp. (SpaceX); Jerry Patterson, General Land Office; Gilberto Salinas, Brownsville Economic Development Council (*Registered, but did not testify:* Jim Allison, County Judges and Commissioners Association of Texas; Jason Hilts, Brownsville Economic Development Council; Buddy Garcia)

Against — (*Registered, but did not testify:* Luke Metzger, Environment Texas; Robin Schneider, Texas Campaign for the Environment)

On — David Land, General Land Office; Ellis Pickett, Surfrider Foundation)

BACKGROUND: Natural Resources Code, ch. 61, charges the land commissioner with promulgating rules on various matters governing the use and maintenance of public beaches.

DIGEST: CSHB 2623 would allow a county commissioners court to temporarily close a beach in reasonable proximity to a space launch site on a primary or backup launch date. The bill would only apply to a county bordering on the Gulf of Mexico that contained a launch site approved by the Federal Aviation Administration (FAA) following an environmental impact statement (Cameron County). The land commissioner would develop rules for the closure of beaches for space flight activities, which would be defined as activities and training in all phases of preparing for and undertaking space flight.

A person planning to conduct a launch in a county included would have to submit primary and backup launch dates to the county commissioners court. The commissioners court could not, without the approval of the land

office, close a beach on:

- a Saturday or Sunday between Memorial Day and Labor Day;
- the Saturday or Sunday before Memorial Day;
- Memorial Day;
- July 4; or
- Labor Day.

When closing a beach, the commissioners court would have to comply with the county's beach access and use and dune protection plans.

The land office could approve or deny a beach or access point closure, enter into a memorandum of agreement with a county containing a launch site, and adopt rules to govern beach and access point closures.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

SUPPORTERS SAY:

CSHB 2623 would allow Cameron County to take the necessary step of temporarily closing public beaches to ensure public safety during a space launch.

The Space Exploration Technologies Corporation (SpaceX), a private corporation NASA has hired for missions to the International Space Station, is currently confined to launching from Cape Canaveral and Vandenberg Air Force Base, where schedules are constricted by competing priorities. SpaceX is reviewing locations for a new launch site for its exclusive use. The location of the proposed launch site in Texas at Boca Chica Beach — about five miles south of South Padre Island and three miles north of the U.S.-Mexico border — is among several locations in Florida, Georgia, and Puerto Rico in contention for the new site.

The site would allow SpaceX to launch the Falcon 9 and Falcon Heavy orbital vertical launch vehicles, as well as a variety of reusable suborbital launch vehicles. Proposed operations would include up to 12 launches per year, with a maximum of two Falcon Heavy launches, through 2022.

In order to be competitive for the launch site, the Legislature should take reasonable actions to ensure the location at Boca Chica Beach is a viable and attractive option for a new launch site. Above all, this requires

ensuring that the affected area could be secured during scheduled launches.

Economic benefit. The proposed SpaceX site would provide a considerable economic boost for the region and the state. The Rio Grande Valley is among the poorest areas of Texas. If constructed, the site would directly create 600 new jobs paying at least $55,000 per year and have an estimated economic impact of $51 million per year. In addition, the site would pay local property taxes and generate state and local sales-and-use taxes from increased economic activity.

The SpaceX launch site also would offer a number of benefits that defy easy quantification. It would present an opportunity for Texas to continue its historic leadership in space exploration activities. The site also would benefit science, math, and engineering education in the state and help instill a healthy curiosity in discovery and exploration among the youth of Texas.

Beach closure. CSHB 2623 is necessary for the location at Boca Chica Beach to be viable as a space launch site. While Cameron County could, under existing law, temporarily close beaches to ensure the public was not exposed to any potential hazards in the launch area, there are no clearly developed rules standardizing this practice for space launches. To remedy this, the bill would allow the land commissioner to adopt rules to govern when and how these closures could be carried out. The perimeter that would have to be cleared to ensure a safe launch is not yet certain, and for this reason, the bill would give specific rulemaking authority to the land commissioner to adopt appropriate rules.

While it is true that the bill could have an impact on residents wishing to use the beach during a launch closure, this would not likely be a widespread problem. CSHB 2623 would prohibit the county, without special permission, from closing the beaches on popular beach days from Memorial Day to Labor Day. Placing limits on when beaches could be closed for launches would ensure the area was accessible in times of great demand. In addition, while Cameron County does operate a park at Boca Chica Beach, it is fairly remote, with no water, wastewater, or electricity services. The small negative effect the bill could have on beach users would be greatly exceeded by the substantial economic benefits to the Rio Grande Valley and the state at large.

Environmental impact. CSHB 2623 simply would provide the necessary authority to close beaches around the Boca Chica site and would have no bearing on environmental issues that have been raised. Some critics with environmental concerns would like to block the beach closure authority in an effort to halt the project, but this bill is not the proper forum for addressing those issues.

The potential environmental impact of the project has been extensively documented in a draft environmental impact statement (EIS) released by the FAA this month. In the course of conducting the EIS, the FAA conferred with many federal agencies, including the U.S. Fish and Wildlife Department and the National Parks Service, and took comments from many others on potential impacts of the project. The EIS suggested there would be environmental impacts associated with the project and recommended mitigation measures that the FAA and SpaceX would implement to reduce or offset potential consequences. In addition, the FAA is undergoing formal consultations with the U.S. Fish and Wildlife Service to minimize the effects of site construction on the piping plover. A mitigation plan to reduce these impacts will appear in the final EIS.

The EIS process is specifically designed to ascertain potential environmental impacts. The FAA's extensive environmental review process determined that the impacts of the project were not overwhelming and could be mitigated by specific measures that currently are under consideration.

Other impacts. To be sure, launching spacecraft from the Boca Chica site would affect area residents in positive and negative ways. Yet the proposal has received overwhelming support from area residents giving public input, and it is clear that most believe the negative impacts of the project are greatly outweighed by the positive benefits to the region and to Texas as a whole.

Boca Chica Village, which would be most affected, has a very small, mostly transient population. With launches limited to 12 per year, the bill should not have a major impact on the quality of life for nearby residents.

OPPONENTS SAY:

While CSHB 2623 might further the laudable goal of enhancing opportunities for space flight activities in the state, it would impose a significant cost in terms of environmental damage to sensitive areas and negative impacts to area residents. There are alternative sites in Texas that

have been considered that are not in the heart of such an environmentally sensitive coastal habitat and would not require beach closures.

Environmental impact. The U.S. Department of the Interior and the Texas Parks and Wildlife Department expressed concerns over impacts to the environmentally sensitive area surrounding the site and the multitude of rare and endangered species that call the area home. The proposed facilities are surrounded by the Refuge Complex lands, which are managed to protect threatened and endangered species and birds. The area encompasses habitat for federally listed species as well as other key fish and wildlife resources, which the project would directly and indirectly impact.

Several species of concern inhabit the proposed project area, including the ocelot, Kemp ridley sea turtle, green sea turtle, loggerhead sea turtles, the Norther Aplomado Falcon, and some species of plover, including the piping plover. In addition, the area is within the Central Flyway, a route through which more than 500 species of birds, representing millions in number, migrate each year.

In addition to the direct loss of habitat resulting from the construction of the project, there is concern that the quality and natural resource value of the surrounding properties would also be reduced as a result of the project. Noise, construction activities, pollutants, and other effects can disrupt animals and habitats in areas at some distance from the core launch site.

Beach closure. CSHB 2623 would authorize the closure of public beaches for a private purpose — launching spacecraft. Texas has a long and proud commitment to protecting access to public beaches for all citizens to enjoy. Closing access to public beaches for private activities on a regular basis would erode this tradition.

By creating an exception for a private entity, the bill could represent the proverbial “camel's nose under the tent.” Creating a precedent of allowing public beach closures for private purposes could lead to the granting of additional closures for a larger number of purposes, which would limit access to public beaches.

Other impacts. The bill would result in a significant noise and aesthetic impacts, especially for residents of Boca Chica Village. The launch site would be a stark feature on the land amid the flat coastal landscape.

Impacts would be felt from launches, and more immediately from the construction of numerous facilities in the area.

NOTES:

The companion bill, SB 1574 by Lucio, was referred to the Senate Natural Resources Committee on March 19.

CSHB 2623 differs from the bill as filed in that it moves provisions allowing the closure of a public beach during a space launch from the Local Government Code into the Natural Resources Code and makes some procedural changes to how the beach closures would be executed.