HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, April 08, 2015
84th Legislature, Number 45
The House convenes at 10 a.m.
Part One

Seventeen bills are on the daily calendar for second-reading consideration today. The bills on the Emergency and Major State calendars analyzed in Part One of today's *Daily Floor Report* are listed on the following page.

Alma Allen
Chairman
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HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Wednesday, April 08, 2015
84th Legislature, Number 45
Part 1

SUBJECT: Creating and funding a high-quality prekindergarten program

COMMITTEE: Public Education — committee substitute recommended

VOTE: 11 ayes — Aycock, Allen, Bohac, Deshotel, Dutton, Farney, Galindo, González, Huberty, K. King, VanDeaver

0 nays

WITNESSES: For — Mandi Kimball, Children at Risk; Jodi Duron, Elgin ISD; Kendra Monk, Elgin ISD; Wes Priddy, Fight Crime: Invest in Kids; Mike Lunceford, Houston ISD; William Chapman, Jarrell ISD; Crystal Dewoody, Knowledge Universe and Texas Licensed Child Care Association; Terry Ford, Lumin Education; Bobby Broyles, Pastors for Texas Children; Nick Farley, Priority Charter Schools; Julie Linn, Texans for Education Reform; Kimberly Kofron, Texas Association for the Education of Young Children; Barry Haenisch, Texas Association of Community Schools; Casey McCreary, Texas Association of School Administrators; Justin Yancy, Texas Business Leadership Council; Paige Williams, Texas Classroom Teachers Association; Courtney Boswell, Texas Institute for Education Reform; Duncan Klussmann, Texas School Alliance; William Exter, The Association of Texas Professional Educators; Michelle Bonton, The Rhodes School; Adrianna Cuellar Rojas, United Ways of Texas; Kristina Halley; Guy Sconzo; Ryan Warner; (*Registered, but did not testify*: David Anderson, Arlington ISD Board of Trustees; Catherine Morse, Austin Chamber of Commerce; Julie Cowan, Austin ISD Board of Trustees; Marshall Kenderdine, Christian Life Commission; Larry Casto, City of Dallas; Brie Franco, City of El Paso; Jeff Coyle, City of San Antonio; Louann Martinez, Dallas ISD; Joseph Mcmahan, Fight Crime: Invest in Kids and Mission: Readiness; Drew Scheberle, Metro 8 Chambers of Commerce; Bill Hammond, Texas Association of Business; Grover Campbell, Texas Association of School Boards; Harley Eckhart, Texas Elementary Principals and Supervisors Association; Cameron Petty, Texas Institute for Education Reform; Yannis Banks, Texas NAACP; Jennifer Allmon, The Texas Catholic Conference of Bishops; Katherine Von Haefen, United Way of Greater Houston; Kristina Davis-Troutman; Dianna Mills)

Against — (*Registered, but did not testify*: Ann Hettinger, Dana Hodges, and Cindy Asmussen, Concerned Women for America; Michael Quinn Sullivan, Texans for Fiscal Responsibility; MerryLynn Gerstenschlager, Texas Eagle Forum)

On — Jacquie Porter, Austin ISD; Chandra Villanueva, Center for Public Policy Priorities; Carol Shattuck, Collaborative for Children; Alan Cohen, Dallas ISD; Lanet Greenhaw, Dallas Regional Chamber; Steven Aleman, Disability Rights Texas; Ray Freeman, Equity Center; Randy Willis, Granger ISD; Scott McClelland, Greater Houston Partnership and Early Matters Coalition; Shelia Marsh and Carla Saravia, Houston Gateway Academy; Haley Simonton, KIPP Houston Public Schools; Marlene Lobberecht, League of Women Voters of Texas; David Fincher and Richard Simpson, NCCC; Melissa Horton, Primrose Schools and the Texas Licensed Child Care Association; David Anthony, Raise Your Hand Texas; Andrea Brauer, Texans Care for Children; Ted Melina Raab, Texas American Federation of Teachers; Larriann Curtis, Texas PTA; Gretchen May, The Commit! Partnership; James Butler; Carrie Marz; (*Registered, but did not testify*: James Ragan, Head Start parents; Lisa Dawn-Fisher, Monica Martinez, and Howard Morrison, Texas Education Agency; Tere Holmes, Texas Licensed Child Care Association; Darren Grissom, Texas PTA; Susan Hoff, United Way Metro Dallas; Steve Swanson)

BACKGROUND: Education Code, sec. 29.153 requires that each school district with at least 15 eligible students offer a free, half-day prekindergarten program. Those eligible for the program include children:

- whose families earn less than 185 percent of the amount stipulated in federal poverty guidelines;
- who are unable to speak or comprehend English;
- who are homeless or in foster care; or
- whose parents are on active military duty.

Prekindergarten enrollment in Texas was about 227,000 in 2013, according to the Texas Education Agency (TEA).

Education Code, sec. 29.1532(c) requires districts that offer prekindergarten to include the following information in their Public Education Information Management System (PEIMS) reports:

- demographic information on enrolled students, including the number of students who are eligible for prekindergarten;
- the number of half-day and full-day prekindergarten classes offered; and
- the sources of funding for the prekindergarten classes.

DIGEST:

CSHB 4 would create a free, high-quality prekindergarten program, beginning with the 2015-16 school year. Districts and open-enrollment charter schools could opt into the program and receive additional funding per eligible student. A high-quality prekindergarten program would be subject to requirements that apply to existing prekindergarten programs, except if there was a conflict, the requirements for a high-quality program would prevail.

Curriculum and teacher requirements. The bill would require participating districts to implement a curriculum that included prekindergarten guidelines established by TEA and that measured the progress of students in meeting recommended learning outcomes. Beginning with the 2016-17 school year, each teacher for a high-quality prekindergarten class would have to be certified and have been awarded a child development associate (CDA) credential. A district could allow a teacher to receive CDA training and credentials from a regional education service center.

Parent engagement. The bill would require districts to develop and implement a parent engagement plan to help the district achieve and maintain high levels of parental involvement and positive parental attitudes toward education.

Program and funding evaluation. Districts would be required to implement appropriate methods for measuring student progress and make data available to parents. The Commissioner of Education would be required to evaluate the use and effectiveness of new funding in improving student learning. The commissioner also would be required to

identify effective instruction strategies implemented by school districts. The results of the commissioner's evaluation would be reported to the Legislature by December 1, 2018.

Reporting requirements. The bill would add the following information to districts' PEIMS reporting requirements:

- class size and ratio of instructional staff to students for each prekindergarten class; and
- each type of assessment administered to prekindergarten students and the results.

Private providers. Districts participating in the high-quality prekindergarten program would be allowed to contract with eligible private providers for services or equipment. Eligible private providers would have to be licensed and in good standing with the Department of Family and Protective Services (DFPS). A provider would be in good standing if DFPS had not taken an action against the provider's license under provisions in the Human Resources Code during the 24 months preceding the date of a contract with a school district.

Private providers also would be required to be accredited by a research-based, nationally recognized, and universally accessible accreditation system approved by the commissioner. A prekindergarten program provided by a private provider would be subject to the requirements of a high-quality prekindergarten program.

Funding. CSHB 4 would entitle children enrolled in a high-quality prekindergarten program to the benefits of the Available School Fund. The Commissioner of Education would be required to establish a funding program from funds appropriated for high-quality prekindergarten. School districts would be required to meet all program standards to receive funding.

Districts would be entitled to receive additional funding in an amount determined by the commissioner for each qualifying student who was four years old on September 1 of the year the student began the program. Districts would be required to use the additional funding to improve the

quality of prekindergarten programs.

In addition to funding for the high-quality program, a district would be eligible for half-day funding under the Foundation School Program for students enrolled in a program class.

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, 2015.

SUPPORTERS SAY:

CSHB 4 would give districts the flexibility and incentives to boost the quality of their prekindergarten programs. These programs serve students most at risk of not succeeding in kindergarten through third grade, including English language learners and students from low-income households. Districts and charter schools that adopt the voluntary standards could use the extra funding to hire new teachers, extend their programs from half-day to full-day, or otherwise improve the quality of their prekindergarten offerings. This opt-in approach would be preferable to mandating full-day prekindergarten because it would give districts the opportunity to expand or enhance existing half-day programs.

While some argue that all districts offering prekindergarten should be required to adopt the high-quality standards, allowing districts to opt into the new program would prevent the bill from being an unfunded mandate. Districts that were not ready to participate right away would have time under the bill to build the infrastructure needed to meet the quality improvements.

Research has shown that the early years are critical in brain development. Children who do not engage in meaningful learning activities during this important time may find themselves chronically behind their peers. Some have pointed to a reported “30 Million Word Gap” between children from high-income and low-income families. CSHB 4 would help reduce this disparity in educational opportunity for many young Texans.

Investing in high-quality prekindergarten would pay dividends by enabling more students to perform at grade level in reading and math by the time they finish third grade, a key milestone noted by the governor

when he declared early childhood education an emergency matter for the 84th Legislature. The state could see savings in the short term as students needed less remediation and in the long term with a better-educated workforce. A 2006 study by the Bush School of Government and Public Service at Texas A&M University found that every dollar invested in high-quality prekindergarten returns $3.50 in combined benefits to the participant, society, and the government.

In addition, districts that have expanded to full-day prekindergarten reported improvements in language development, communication, literacy, and social-emotional development that helps prepare children for kindergarten. Aldine ISD, which began offering full-day prekindergarten in 2002, said students who attended full-day prekindergarten were ahead of their peers in results on the state-mandated (STAAR) assessments in grades 3-6.

Funding. The bill would authorize funding through the school finance formulas for districts that adopted high-quality standards for their prekindergarten classes. This method of finance would be a better way to help districts expand their programs than previous grant programs that were subject to intermittent and highly variable funding. The fiscal note overstated the bill's cost by at least half because the Legislative Budget Board (LBB) estimated that funding would double from the current $3,820 per eligible student. CSHB 4 would direct the Commissioner of Education to design a funding system using only the funds appropriated for a high-quality prekindergarten program. Prekindergarten funding in the House-passed budget bill would include $30 million in general revenue, with additional general revenue funds under consideration in Article 11.

Curriculum and teacher requirements. CSHB 4 would reward districts that hire certified teachers with additional training in child development and align curriculum with TEA-approved prekindergarten guidelines. Children in prekindergarten classes would benefit from highly qualified teachers and proven curriculum.

Reporting requirements. The bill would recognize the importance of vigorous data collection and reporting to evaluating the effectiveness of

prekindergarten programs. Collecting data about class sizes and the results of student assessments would help lawmakers monitor the implementation of the high-quality prekindergarten program, identify best practices, and promote accountability.

Program evaluation. As Texas increases spending on prekindergarten, it is important that these tax dollars are monitored and that the program is held accountable for outcomes and student success. Using developmentally appropriate assessments to measure student progress would be different from a high-stakes exam and should not subject prekindergarten students to the stress of testing.

Parent engagement. Consistent parental involvement is critical to a child's development and success in school. The bill would allow districts to design methods of involving parents that meet local needs. For example, parents could be taught the importance of reading to their children at home. When parents become partners in their children's education right from the beginning, they may be more likely to stay involved as their children progress through elementary and secondary school.

Private providers. The option to partner with private providers is a financially equitable way for districts to meet the high-quality prekindergarten standards. This option could be particularly helpful for fast-growing districts that did not have space in their elementary schools for new prekindergarten classrooms. High-performing private day care providers and preschools could benefit from the partnerships instead of being forced to compete with local public school programs.

OPPONENTS SAY:

CSHB 4 would create an expensive new prekindergarten program that might not achieve the improvements in early school success that supporters claim. The fiscal note reports the cost of the bill at $643.9 million in fiscal 2016-17. Although the new program would be limited to certain students, the bill could create a slippery slope toward universal full-day prekindergarten for every four-year-old in Texas, which could carry an even higher price tag and require districts to build new classrooms.

For most four-year-olds, the best learning environment is at home with a parent. Texas should not be telling parents that government-run schools can do a better job preparing their children to learn to read and perform other basic skills than can parents themselves. Many four-year-olds are not developmentally prepared for long hours of structured curriculum and assessments, which could lead to stress for these young Texans.

For those working parents who need child care, existing programs such as the state's current half-day prekindergarten and Head Start provide options for educationally disadvantaged students to gain early exposure to structured learning.

Some research suggests the initial gains of students who attended prekindergarten tend to fade out by third grade. Texas should be cautious about creating an expensive new entitlement that might not produce the desired result. As the Texas school-age population grows, the state should use any new school funding to address the K-12 schools currently failing to meet state standards.

Private providers. By attaching funding to new prekindergarten standards, the bill could provide a financial incentive for public schools to crowd out some private prekindergarten providers. Without revenue from classrooms serving four-year-olds, some licensed day care centers could not afford to provide more costly infant care. Nonprofits such as churches and local community organizations also could be affected as parents chose free public school programs. Although CSHB 4 would allow districts to partner with eligible private providers, the stringent demands of providing a program that met the requirements of the bill could limit the number of private providers interested in contracting with districts. In order to save money and preserve the existing infrastructure of qualified private providers, districts should be required to contract with private providers.

Program accountability. Some school districts have made the decision to provide full-day prekindergarten and are reporting good results. CSHB 4 would require costly mandated assessments. Children at the age of four might not respond well to assessments even if they knew the answers because of their limited attention span or simply because they did not feel like answering. Assessments at this age also could take up valuable

classroom time because they often involve multiple observations of teachers interacting with students.

OTHER OPPONENTS SAY:

CSHB 4 would be a good start to focus resources on prekindergarten but would not go far enough. It would not expand eligibility to all four-year-olds nor require full-day prekindergarten. Texas cannot provide its children the best possible prekindergarten unless the state is willing to pay the costs. The anticipated supplemental prekindergarten funding included in the House's proposed budget would not reach the level of a $200 million grant program that was cut from the budget beginning in fiscal 2012.

A quality full-day program would deliver the best, most sustainable results for educationally disadvantaged kids. Working families might choose not to enroll their children in half-day programs because of the difficulty of picking up students from school in the middle of the day.

The bill also should impose class size limits and student-teacher ratios. One study by a children's advocacy group found the average Texas prekindergarten class size was 20 students. Other proposed legislation would have required a 10 to 1 student-teacher ratio.
Addressing quality should not be attempted through a voluntary system. Instead, the quality improvements proposed in the bill should be required of all districts with a prekindergarten program. In addition, it would not make sense to require accountability of some prekindergarten programs and not others.

NOTES:

The fiscal note anticipates a cost of $643.9 million during fiscal 2016-17 to implement the high-quality prekindergarten program. The LBB estimates that about 78,000 prekindergarten students would be eligible for funding in fiscal 2016, increasing to about 83,000 in fiscal 2020. The LBB estimated funding at $3,820 per student in average daily attendance for a cost of $298.4 million in fiscal 2016 and $303 million in fiscal 2017. The fiscal note assumes additional state costs to the Teacher Retirement System for districts that hire new teachers and to TEA for data collection and one FTE to administer the new program. School districts and charter schools could incur costs of $2,510 per teacher for CDA credentialing, according to the fiscal note. The LBB states that participating districts

likely would incur some level of local cost associated with the construction or acquisition of additional classroom facilities.

Unlike HB 4 as introduced, CSHB 4 would:

- require teachers to have a CDA credential, beginning with the 2016-17 school year;
- allow regional education service centers to provide training for CDA credentials;
- require PEIMS reporting of class size and student-teacher ratios, type of assessments administered, and assessment results; and
- allow districts to enter into contracts with eligible private providers.

The Senate companion, SB 801 by Zaffirini, was referred on March 3 to the Senate Education Committee.

SUBJECT: Establishing in statute Border Prosecution Unit to handle border crimes

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 8 ayes — Phillips, Nevárez, Burns, Dale, Metcalf, Moody, M. White, Wray

0 nays

1 absent — Johnson

WITNESSES: For — Jose Aliseda and Jaime Esparza, Border Prosecution Unit; (*Registered, but did not testify*: Carlos Garcia, 79th Judicial District Attorney's Office; Tonya Ahlschwede; Katherine McAnally)

Against — None

On — (*Registered, but did not testify*: Tom Krampitz, Border Prosecution Unit)

DIGEST: CSHB 12 would establish in statute an independent Border Prosecution Unit that would cooperate with and support attorneys in prosecuting border crime. The bill would provide requirements for the composition of personnel and for the duties, responsibilities, and operating functions of the unit. Specifically, CSHB 12 would:

- outline the unit's required responsibilities;
- create a board of directors to govern the unit and an executive board, with elected officers, to govern the board of directors; and
- require the executive board to hire regional counsel for each subregion.

The bill also would amend the definitions of border crime and border region and would remove a restriction in current law that certain funds must be appropriated only to the criminal justice division to award grants related to border crime prosecution.

Responsibilities of the Border Prosecution Unit. The Border Prosecution Unit, in collaboration with the Department of Public Safety (DPS), would assist in prosecuting border crime by providing prosecuting attorneys, investigative and support staff, and additional resources.

The unit would provide funding for staff and resources based on solicited requests for proposals from each member of the board of directors, which would govern the unit. The unit would be required to review each request and make recommendations to the criminal justice division of the governor's office regarding distribution of grant funds under the Prosecution of Border Crime Grant Program. The unit could solicit requests and make such recommendations for distribution of grant money to a prosecuting attorney who does not serve in the border region if DPS determined the county or counties the prosecutor represented were significantly affected by border crime.

The unit also would:

- facilitate collaboration of the board of directors with regional counsel and law enforcement in the investigation and prosecution of border crime;
- develop a nonexclusive list of offenses that constitute a "border crime" that are not already included in the statutory definition;
- develop best practices and guidelines for investigation and prosecution of border crime; and
- assist in developing and providing training to prosecutors and law enforcement agencies on issues and techniques relating to the investigation and prosecution of border crime.

CSHB 12 also would allow the unit to apply for and accept gifts, grants, and donations from certain tax-exempt organizations or grants under federal and state programs to fund any activity of the unit under this bill.

Governing structure. The board of directors governing the unit would be composed of attorneys who prosecute felonies in the border region. The board would include district attorneys from 13 different judicial districts, the criminal district attorney for Hidalgo County, a county attorney for

Cameron County, the district attorney for Kleberg and Kenedy counties, and a county attorney for Willacy County.

CSHB 12 would require the board of directors to divide the border region into three subregions and to set the subregion boundaries. The board would meet annually to approve bylaws and to elect an executive board.

Executive Board. The board of directors would be governed by an executive board of seven members elected to two-year terms by the board of directors. Six of those members would represent the subregions and would be elected by a majority vote of the members of the board of directors whose jurisdiction is located in that subregion. One member would be elected by a majority vote of all members of the board of directors.

The executive board would be required to conduct the business of the unit and to hire one or more attorneys to serve as regional counsel for each subregion. The executive board also could employ a person to serve as administrator of the unit or any additional employees needed to carry out the duties of the unit.

Membership on the board of directors or on the executive board would not be considered a paid civil office position. Members would not be entitled to compensation, but they would be entitled to reimbursement for necessary expenses incurred in carrying out their duties.

Officers. The board of directors would elect a presiding officer and an assistant presiding officer from the executive board to serve one-year terms. The assistant presiding officer would serve in the presiding officer's absence or if there were a vacancy in that position before a new officer was elected.

Regional counsel. CSHB 12 would require the executive board to hire one or more attorneys as regional counsel for each subregion. The regional counsel would be required to assist the board of directors, prosecutors, and other regional counsel in screening and prosecution of border crime, presenting cases to a grand jury, and preparing for trial.

Regional counsel would be required to:

- serve as a liaison between the board of directors and other criminal justice entities;
- provide legal and technical assistance to law enforcement agencies investigating border crime;
- coordinate training with the unit for the board of directors and law enforcement; and
- provide legal and technical assistance to border prosecuting attorneys.

In addition, CSHB 12 would include sexual offenses and assaultive offenses in the statutory definition of border crime. The definition of border region would be expanded to include a county served by a prosecuting attorney whose jurisdiction includes a county that is adjacent to an international border or that is adjacent to a border-adjacent county.

The bill also would repeal the requirement that undedicated and unobligated funds from the operators and chauffeurs license account be appropriated only to the criminal justice division for the purpose of awarding grants under the Prosecution of Border Crime Grant Program.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 12 would formalize the practices and procedures that the Border Prosecution Unit has been implementing successfully since 2009, when Gov. Perry created the unit to aid in border security operations. The bill also would provide additional structure and guidance for the unit.

The Border Prosecution Unit is vital in providing resources to prosecutors to screen cases, secure indictments, and bring criminals to trial. Under the program, the state provides funding for district attorneys to coordinate with law enforcement to handle border crimes, including drug trafficking, human trafficking, and money laundering. The Border Prosecution Unit also targets gangs and other criminal organizations operating in Texas, including those in state prison facilities. The unit has developed the definition of border crime, created performance measures, conducted joint training exercises, and developed protocol together with DPS for handling

border cases. Codifying the Border Prosecution Unit would give it more predictability and permanency. Formally establishing the Border Prosecution Unit also would complement the increase in law enforcement that recently was established in the border region.

Formalizing the unit's practices would improve coordination and communication on the border between prosecutors and law enforcement. Some of the regional counsel described in the bill would reside in DPS offices. This would promote more efficient collaboration and use of resources to detect threats and take down large criminal enterprises. CSHB 12 also would improve coordination between jurisdictions in cases that reach across county and jurisdictional boundaries.

CSHB 12 would allow for money and resources to continue to be distributed to some of the poorest counties in the state where they would make the biggest impact. Border counties have experienced an expansion of criminal activity beyond money laundering and drug trafficking, including kidnapping and extortion. Many cartels and other criminals along the border have figured out which counties have fewer resources for investigations and prosecutions and seek to exploit those areas. Many of the small rural border counties affected by CSHB 12 have just three prosecutors, only one of which may be a border prosecutor. This bill would solidify a unit that makes a big difference in combating border crime, particularly in those communities.

Border crime affects the entire state, but CSHB 12 would help prevent criminals from spreading deeper into Texas by stopping crime as close to the border as possible. Statistics showing low crime rates in border cities are not accurate. Major crimes are being committed on the border, as well as beyond the border region. Although El Paso reports low crime rates, it is dangerous just across the border. The unit is necessary to ensure the safety of the border and the rest of the state.

OPPONENTS SAY:

CSHB 12 is an unnecessary bill that would allow for the operation of a unit that already has been operating since 2009 without statutory authority. The Border Prosecution Unit does not need statutory authority to continue its work.

Furthermore, the bill would codify a prosecution unit that uses additional state funding to combat crime in an area that is relatively safe. The border region has a low crime rate compared with the rest of the state. El Paso has one of the lowest crime rates in the country compared with other cities of its size, and the Rio Grande Valley is safer than most U.S. cities. Devoting more state resources to increasing criminal investigations and prosecutions in this area is unnecessary.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have an estimated negative net impact to general revenue funds of $2.97 million through the biennium ending August 31, 2017.

CSHB 12 differs from the introduced bill in that it would:

- use the definitions of border crime and border region that are specified by Government Code, sec. 772.0071 instead of reprinting the definitions in a new subsection;
- include assaultive and sexual offenses in the definition of border crime;
- add certain counties to the definition of border region under sec. 772.0071;
- change the definition of border prosecuting attorney to include any attorney who prosecutes felony border crimes;
- require that a prosecuting attorney have felony criminal jurisdiction;
- specify that the board of directors members for Cameron and Willacy counties be county attorneys with felony criminal jurisdiction, rather than district attorneys;
- allow, rather than require, the executive board to hire a unit administrator;
- allow prosecuting attorneys to use grant funds to hire support staff and other resources;
- require the unit to solicit and review requests for grant proposals from members of the board of directors and make recommendations to the criminal justice division of the governor's office;
- allow the unit to solicit requests and make recommendations for grant support for prosecuting attorneys outside the border region if

it is determined the county is significantly affected by border crime;

- remove a requirement in the original bill that would have required the state to reimburse a county in the border region for certain expenses; and
- repeal Government Code, section 772.0071(d), related to appropriations used to award border crime prosecution grants.

A duplicate bill, HB 3037, was filed by Longoria on March 11.

SUBJECT: Continuing Governor's Committee on People with Disabilities

COMMITTEE: Human Services — committee substitute recommended

VOTE: 9 ayes — Raymond, Rose, Keough, S. King, Klick, Naishtat, Peña, Price, Spitzer

0 nays

WITNESSES: For — None

Against — None

On — Erick Fajardo, Sunset Advisory Commission; (*Registered, but did not testify*: Jennifer McPhail, ADAPT; Ken Levine, Sunset Advisory Commission; Sandra Bitter, Texas State Independent Living Council)

BACKGROUND: The Governor's Committee on People with Disabilities (GCPD), a trusteed program within the Office of the Governor established in statute in 1991, was set up to serve as a central information and education resource on the abilities, rights, and needs of people with disabilities. The GCPD provides policy recommendations on disability issues to the governor and the Legislature, offers technical assistance and referral services to the public on how to navigate disability services and laws, and works with federal, state, and local governments and private businesses on disability issues. It also recognizes employers for hiring and retaining individuals with disabilities and media professionals and students for positively depicting disabled Texans.

The GCPD is composed of 12 members, at least seven of whom must be individuals with disabilities. Members are appointed by the governor for staggered terms of two years, with half of the members' terms expiring each year. The GCPD has four ex officio members who represent state agencies that serve people with disabilities, and the governor may appoint additional ex officio members. The GCPD currently has seven ex officio members. The board oversees a staff of five employees.

In fiscal 2013, the Legislature appropriated $560,016 in general revenue

to the GCPD, $314,226 of which went to the GCPD's internal operating budget and $139,841 of which went to the governor's office to provide administrative support to the committee. About 90 percent of the committee's internal operating budget is allocated for staff salary and benefits. The GCPD has the authority to carry forward into the next biennium any unexpended balance, which was $641,639 in fiscal 2014.

The GCPD last underwent Sunset review in 1999 and was extended. The GCPD's authorization will expire on September 1, 2015, unless it is continued.

DIGEST:

CSHB 1678 would continue the GCPD as a trusteed program within the Office of the Governor until September 1, 2027, and would eliminate several committee functions and add new functions.

Under the bill, the GCPD no longer would be required to:

- evaluate and report to the governor and Legislature on the state's compliance with the federal Americans with Disabilities Act (ADA) of 1990 and other federal and state statutes related to the rights and opportunities of people with disabilities;
- collect and evaluate data on state agencies' employment of people with disabilities; and
- create a long-range state plan for people with disabilities and recommendations to implement the plan.

Under the bill, the GCPD would have to:

- identify the various current long-range plans for people with disabilities in Texas created by state agencies, agencies' committees, or non-profit organizations required by federal law to produce such a plan, and publish on the GCPD's website a web link, if available, to each plan; and
- review and analyze the long-range plans described above to identify gaps in state laws and services for people with disabilities and make recommendations in the committee's required biennial report to the governor and the Legislature.

CSHB 1678 would take effect September 1, 2015.

SUPPORTERS

The Governor's Committee on People with Disabilities should be

SAY: continued because it serves a valuable purpose as a central source of information and education for the governor, the Legislature, and the public on disability-related issues and services.

Statutory requirements that do not align with the GCPD's purpose should be removed to clarify the committee's functions and responsibilities. This would allow the committee to more realistically meet its duties. Among those provisions is the requirement that the GCPD collect data and prepare reports on the state's compliance with the ADA and other federal and state laws relating to people with disabilities. This function was mandated just after the federal ADA was enacted in 1990. Since that time, both federal and state disability law has evolved and broadened to such an extent that the GCPD no longer can realistically evaluate Texas' compliance. Furthermore, data relating to ADA compliance cannot be verified because it is self-reported.

The GCPD has not developed long-range plans for people with disabilities and this statutory requirement should be eliminated. This function is performed by multiple state agencies, such as the State Independent Living Council, and this duplication of responsibility makes it more difficult for policymakers and the public to understand what the plans address and if gaps in service exist.

Several barriers also prevent the GCPD from collecting data on how many people with disabilities are employed by state agencies, and the committee should not be required to gather that information. Federal law protects a person's disability status, and even if disability status is voluntarily disclosed, this information, by law, is treated as confidential. Laws protecting confidentiality require such stringent standards for use of the information that it would impose significant administrative costs on the GCPD and state agencies to gather insignificant amounts of unverifiable data if this mandate was continued.

The GCPD, as a central resource for information, should be required to gather, analyze, and publish all long-range plans created by state agencies and committees. Texas would benefit from having a centralized repository for all state plans relating to people with disabilities, as well as having systematic reviews to identify any gaps in service or room for improvement because this would provide a more complete picture of how

the state serves the disabled community. Putting this information on the GCPD's website would make it easier for people with disabilities and their advocates to navigate state resources.

The GCPD should remain a trusteed program within the Office of the Governor because it elevates the committee's status and enables it to access and keep the governor and governor's staff informed on disability-related issues and policies.

The bill would bring the committee's responsibilities more in line with the functions it can realistically be expected to perform with its current resources. While the bill would remove some duties that were not practical for the committee to carry out, several others that are more manageable and attainable would be added.

OPPONENTS SAY:

No apparent opposition.

NOTES:

CSHB 1678 differs from HB 1678 by updating the name of the former President's Committee on Employment of Persons with Disabilities to the Office of Disability Employment Policy. The committee substitute specifies that the GCPD would identify long-range plans for persons with disabilities who live in Texas, not elsewhere, and would include plans from nonprofit organizations required by federal law to produce such a plan.

Two companion bills, SB 211 and SB 688, both by Schwertner, were referred to the Senate Health and Human Services Committee on February 25, 2015.

SUBJECT: Removing the Texas Health Services Authority from statute

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Raymond, Rose, Keough, S. King, Naishtat, Peña, Price, Spitzer

0 nays

1 absent — Klick

WITNESSES: For — (*Registered, but did not testify*: Harry Holmes, Texas Association of Healthcare Information Organizations; Nora Belcher, Texas e-Health Alliance)

Against — None

On — Karl Spock, Sunset Advisory Commission; (*Registered, but did not testify*: Tony Gilman, Texas Health Services Authority; Troy Alexander, Texas Medical Association)

BACKGROUND: In 2007, the 80th Legislature created the Texas Health Services Authority (THSA). This public-private partnership, legally structured as a public nonprofit corporation, is designed to accelerate the secure sharing of health-related information, including electronic medical records, among health providers through the adoption of health information exchanges across the state. The entity is subject to the Sunset Act but has not undergone Sunset review. If not continued in statute, the entity would expire on September 1, 2015.

Agency function. THSA promotes and coordinates the development of local and statewide health information exchanges that transfer patient medical records among providers. The Texas Health and Human Services Commission (HHSC), with support from THSA, competitively funded 10 local health information exchanges using federal grant money. THSA also created a state health information exchange called HIETexas that aims to act as a hub to connect local exchanges in Texas to each other and to networks outside the state.

In 2011, the 82nd Legislature directed THSA to develop privacy and security standards for electronically sharing protected health information and to establish a process by which an entity could apply for certification under these standards. THSA currently enforces the security standards adopted by HHSC.

Governing structure. THSA is an independent entity that contracts with but is not a part of HHSC. It is governed by an 11-member board of directors appointed by the governor with the advice and consent of the Texas Senate. The governor also appoints two ex-officio, nonvoting board members who represent the Texas Department of State Health Services. The board's chairman and five staff members oversee THSA's daily operations.

Funding. THSA receives no ongoing state appropriation, although the Legislature distributed $5 million to THSA from the Texas Health Insurance Pool in fiscal 2014, the same year in which federal funding for THSA ran out.

DIGEST:

HB 1680 would remove the Texas Health Services Authority (THSA) from statute and Sunset review effective September 1, 2021. In place of the authority, the bill would designate in statute a private nonprofit organization with relevant knowledge and experience in establishing statewide health information exchange capabilities to succeed THSA following its expiration in 2021.

Expiration in statute of THSA's authority. Effective September 1, 2021, the bill would remove from statute the following provisions regarding THSA:

- a list of the agency's general powers and duties;
- a list of acts in which THSA may not engage;
- requirements regarding the confidentiality of protected health information and individually identifiable health information collected, assembled, or maintained by THSA;
- requirements that THSA establish security standards to protect the transmission and receipt of individually identifiable health

information or data;

- requirements that THSA establish policies and procedures for taking disciplinary actions against a board member, employee, or other person who violates state or federal privacy laws related to health care information or THSA-maintained data;
- a requirement that THSA take commercially reasonable measures to protect its intellectual property;
- a requirement that THSA submit an annual report to certain governmental entities;
- a provision allowing THSA to be funded through the general appropriations act and to request, accept, and use gifts and grants as necessary in addition to assessing fees or other revenue-generating activities to cover costs associated with its functions;
- a requirement that THSA collaborate with the Electronic Health Information Exchange System Advisory Committee to ensure that certain health information exchange systems are interoperable;
- a requirement that THSA coordinate with HHSC, the attorney general, and the Texas Department of Insurance to request a federal audit of an entity's compliance with HIPAA and to monitor and review entities that use, store, or transmit health information; and
- a requirement that THSA apply for and pursue federal funding in consultation with HHSC and the Texas Department of Insurance.

Transfer of THSA's advisory committee role to a private nonprofit organization. Effective September 1, 2021, the bill also would remove a representative of the Texas Health Services Authority from the Electronic Health Information Exchange System Advisory Committee and would add to the advisory committee at least one representative of the private nonprofit organization with relevant knowledge and experience in establishing statewide health information exchange capabilities.

Privacy and security standards. The bill would maintain in statute the privacy and security standards for the electronic sharing of protected health information that were developed by THSA and adopted by HHSC until the commission amends the standards by rule. Under the bill, if HHSC did amend the standards, it would have to seek the assistance of a private nonprofit organization with relevant knowledge and experience in

establishing statewide health information exchange capabilities.

The amended standards would have to:

- comply with the Health Insurance Portability and Accountability Act and Privacy Standards and chapter 181 of the Health and Safety Code;
- comply with any other state and federal law relating to the security and confidentiality of electronic health information;
- ensure the secure maintenance and disclosure of individually identifiable health information;
- include strategies and procedures for disclosing individually identifiable health information; and
- support a level of system interoperability with existing health record databases in Texas that is consistent with emerging standards.

Transfer of THSA's role in certifying compliance with privacy standards. In place of THSA, a private nonprofit organization would establish a process by which an entity that uses, stores, or transmits health information could apply to the nonprofit for a certificate of compliance with privacy standards. If this private nonprofit did not exist, the bill would allow HHSC to establish its own certification process or designate another entity with relevant knowledge to establish a certification process.

Board membership. HB 1680 would increase membership on THSA's governor-appointed board of directors from 11 to 12, including a voting board member who would represent Texas local health information exchanges. The bill would change the board's structure by requiring the two ex-officio, nonvoting members to be representatives of any health and human services agency rather than representatives of the Department of State Health Services.

Except as otherwise provided, the bill would take effect September 1, 2015.

SUPPORTERS SAY:

By directing THSA to function as a private nonprofit corporation rather than as a public nonprofit, HB 1680 would allow THSA to continue its

core functions with greater flexibility to operate, create services, and deliver value.

As a private nonprofit corporation, it would be more dependent on market forces to drive development of health information exchanges and therefore more responsive to the needs of health care providers and health information exchanges, which would financially support THSA through user fees or other funding if they found its services to be valuable. The entity should depend on participation by the private sector for its financial support, not the largesse of the state. A private model would be in line with a recommendation from THSA's *2014 Texas State HIE Strategic Plan* that government participation in health information infrastructure be limited to catalyzing relevant markets, facilitating collaborations, aligning incentives, and easing regulatory burdens.

Transitioning THSA to a private nonprofit corporation model also would allow the entity to review its computer security systems to certify compliance with privacy and security standards without creating the possibility that the results of the review and security flaws would be open to disclosure under the Public Information Act.

Transitioning THSA from a public nonprofit model to a private nonprofit model additionally would not lower the privacy and security standards for protected health information that HHSC and THSA already have developed. Under its new structure, THSA could continue assisting in developing or changing standards if HHSC requested it. Statutory provisions that protect providers in compliance with privacy and security standards still would be maintained in law. Moreover, health care providers are concerned with meeting federal HIPAA standards and would participate only in a health information exchange that met those standards. THSA's privacy standards certification program also would ensure that bad actors who did not protect the privacy of health information would not be certified.

Transitioning THSA to a private nonprofit corporation model also would not necessarily reduce oversight. Under its new structure, THSA could establish its own oversight board to meet its needs in place of the governor-appointed board of directors.

The bill would keep the funding model for THSA largely the same as it is now. THSA already had authority in statute to use funding from user fees or other revenue-generating models in addition to state funds. The THSA already does not receive ongoing state appropriations and it has been preparing to be a fully market-driven model for several years. The entity also could continue to use federal grant funds through HHSC if more funding became available. The new model would not unnecessarily jeopardize providers' access to electronic health information exchanges.

OPPONENTS SAY:

By transitioning THSA from a public-private partnership to a private nonprofit corporation model, HB 1680 would reduce government oversight of the transfer of electronic health information by removing its governor-appointed board. THSA already operates with a market-oriented focus and would not need to transition to a private corporation model to continue that focus. A private nonprofit board might not be as responsive to privacy concerns as the current governor-appointed board.

If THSA under its new structure could not raise funds to support the performance of its duties, the bill could jeopardize the availability of health information exchanges at a time when most health providers are switching to electronic-only health records and will need access to a robust, secure, low-cost network of exchanges.

NOTES:

The companion bill, SB 203 by Nelson, was reported favorably by the Senate Health and Human Services Committee on March 23 and placed on the local and uncontested calendar for April 9.

CSHB 1680 differs from the introduced bill in that the committee substitute would:

- provide for the Electronic Health Information Exchange System Advisory Committee to have at least one representative from the private nonprofit organization succeeding THSA after the entity expired in statute;
- require, rather than allow, HHSC to seek the assistance of the private nonprofit organization that succeeds THSA;
- reorganize provisions regarding the privacy standards certification

process to specify that the new provisions transferring the certification process from THSA to its private nonprofit successor would go into effect after THSA expired in statute;

- provide for THSA's private nonprofit successor to continue certifying entities that met privacy and security standards rather than giving this authority to HHSC;
- require the organization that establishes the privacy standards certification process to publish the standards on its website; and
- specify that the bill would take effect September 1, 2015, except as otherwise provided.

SUBJECT: Continuing the Department of Assistive and Rehabilitative Services

COMMITTEE: Human Services — committee substitute recommended

VOTE: 6 ayes — Raymond, S. King, Keough, Peña, Price, Spitzer

2 nays — Rose, Naishtat

1 absent — Klick

WITNESSES: For — Amy Kantoff, Texas Association of Centers for Independent Living; (*Registered, but did not testify*: John Kroll, HEART Program; Deanna L. Kuykendall, Texas Brain Injury Providers' Alliance)

Against — Edgenie Bellah, Amanda Huston, Kim Huston, and Nancy Toelle, Alliance of and for Visually Impaired Texans (AVIT); Paul Hunt, American Council of the Blind of Texas; Jacqueline Izaguirre, DBMAT; Sheryl Hunt; Patsy Izaguirre; (*Registered, but did not testify*: Cyral Miller, AVIT; Debra Leff)

On — Dennis Borel, Coalition of Texans with Disabilities; Veronda L. Durden, Department of Assistive and Rehabilitative Services; Steven Aleman, Disability Rights Texas; Karen Latta and Ginny Mckay, Sunset Advisory Commission; Erin Lawler, Texas Council of Community Centers; Sandra Bitter, Texas State Independent Living Council; Larry Temple, Texas Workforce Commission; Linda Litzinger; (*Registered, but did not testify*: Adam Graves, AVIT; Scott Bowman, Cheryl Fuller, and Rebecca Trevino, Department of Assistive and Rehabilitative Services; Chris Traylor, Health and Human Services Commission; Faye Rencher, Sunset Advisory Commission)

BACKGROUND: The Department of Assistive and Rehabilitative Services (DARS) was formed in 2003 when the 78th Legislature consolidated four agencies: the Texas Rehabilitation Commission, Texas Commission for the Blind, Interagency Council on Early Childhood Intervention, and Texas Commission for the Deaf and Hard of Hearing. This is the first time DARS has undergone Sunset review. If not reauthorized in statute, the

agency's authority would expire on September 1, 2015.

Agency function. DARS administers programs that help Texans with disabilities and delays in development to meet educational goals, find jobs, and live independently in their communities. The agency administers its programs through four divisions: rehabilitation services, blind services, early childhood intervention services, and Social Security disability determination services. In addition to the programs in these divisions, the agency administers the Children's Autism Program and provides services to people who are deaf or hard of hearing.

Governing structure. The executive commissioner of the Health and Human Services Commission appoints the commissioner of DARS. The commissioner and the Department of Assistive and Rehabilitative Services Council help to develop rules and policies for the agency. The governor appoints the nine members of the council with the consent of the Texas Senate.

Three federally required advisory bodies also advise the commissioner: the Rehabilitation Council of Texas, Early Childhood Intervention Advisory Committee, and Elected Committee of Managers for the Business Enterprises of Texas. In addition, the Board for Evaluation of Interpreters advises the agency's Office of Deaf and Hard of Hearing Services on the interpreter certification program and is responsible for testing and certifying the skill level of individuals seeking to become certified American Sign Language interpreters in Texas.

Staffing. In fiscal 2013, the department employed a staff of 2,893, the majority of whom work throughout the state in 25 blind services offices and 119 general disability services offices. The remainder of the agency's employees work in the agency's disability determination services offices, at the Criss Cole Rehabilitation Center, and at the agency's headquarters.

Funding. The 83rd Legislature appropriated $1.3 billion to the agency for fiscal 2014-15, including $255.1 million in general revenue and general revenue dedicated funds, $969.7 million in federal funds, and $39.4 million in other funds. According to the Sunset Advisory Commission, the 83rd Legislature increased the agency's appropriations by 7 percent,

mainly to maintain service levels and fund caseload growth in the Early Childhood Intervention Program. Increased funding also helped to expand and improve services in the Autism, Deaf and Hard of Hearing, and Comprehensive Rehabilitation Services Programs.

DIGEST:

CSHB 2463 would continue the Department of Assistive and Rehabilitative Services (DARS) until September 1, 2027, only if HB 2304, SB 200, or similar legislation were not enacted by the 84th Legislature and did not transfer the functions of the agency to the Health and Human Services Commission (HHSC). Otherwise, the agency would expire as scheduled in statute on September 1, 2015.

The agency also would have to implement certain changes. The bill would require that DARS:

- combine two independent living programs into one program;
- ensure that independent living services are provided directly by federally defined centers for independent living, rather than the agency;
- develop rules for monitoring, contracting, and providing independent living services;
- set guidelines for DARS caseworkers providing direct services; and
- create a uniform case review system for the agency's direct services programs.

The bill also would establish in statute two existing DARS programs, the Children's Autism Program and the Comprehensive Rehabilitation Services Program.

Independent living services

The bill would require that by September 1, 2016, DARS combine the Independent Living Program for people who are blind or visually impaired with the Independent Living Services Program for individuals with significant disabilities. The department would cease to directly provide independent living services under the combined program by August 31, 2016, and instead would contract for services with federally

defined centers for independent living (CILs). These centers are consumer-controlled, community-based, cross-disability, non-residential, private nonprofit agencies that are designed and operated within a local community by individuals with disabilities and that provide an array of independent living services.

Oversight of independent living services. The bill would require DARS to monitor the performance of each center for independent living and to monitor how each center monitors its subcontractors. DARS would be required to evaluate the independent living services provided by a center for independent living and to provide necessary training or technical assistance to help the CIL expand its capacity to provide a full range of independent living services.

Guidelines for providing independent living services. The bill also would establish guidelines for providing independent living services to areas of the state without a center for independent living. If an area of the state did not have a CIL or a CIL was not able to provide certain necessary services under the combined independent living services program, the bill would require DARS to identify a CIL that could contract with another nonprofit or other person to provide independent living services. If DARS could not find a CIL to contract with another person or nonprofit to provide the independent living services, the bill would allow DARS to contract directly with another entity to provide services under the combined program.

Rule adoption. The executive commissioner of the HHSC would have to adopt rules facilitating the integration of the independent living programs and directing the agency to comply with federal requirements for the integrated program. The bill also would require the executive commissioner to adopt rules providing:

- an equitable and transparent methodology for allocating funds to centers for independent living under the combined independent living services program;
- requirements for the agency's contracts with CILs and other entities;
- requirements for CILs' contracts with other entities;

- a process for DARS to monitor independent living services contracts;
- guidelines for how DARS would provide technical assistance and training to CILs; and
- expectations for DARS employees to refer people seeking independent living services to CILs.

The bill would require the HHSC executive commissioner's rules to be adopted as soon as practicable after September 1, 2015.

Direct services programs

Guidelines for direct services caseworkers. The bill would require DARS to use program data and best practices to set guidelines providing direction for caseworkers' decisions in all of the agency's direct services programs. These guidelines would be provided to caseworkers in an easily accessible format and would have to:

- categorize cases based on the types of services provided and include the recommended length of time a case should last and the recommended total expenditures for a case in each category;
- include provisions for creating intermediate goals for a client that would allow the caseworker and the caseworker's supervisor to monitor the client's progress; and
- include criteria for caseworkers to evaluate progress on their clients' intermediate goals.

DARS could add additional caseworker guidelines, and caseworkers could exceed the recommended guidelines if necessary. The bill would specify that the guidelines were not intended to limit the provision of appropriate or necessary services to a client.

Case review system. The bill would require DARS to create a single, uniform case review system for all direct services programs. The new case review system would have to include risk-assessment tools and would require that the new system be used for the following purposes:

- to consistently evaluate each direct services program across all regions, with the goal of evaluating at least 10 percent of all cases in each program and region each year;
- to focus on areas of highest risk and prioritize certain cases to review;
- to evaluate a caseworker's eligibility determinations and their decisions to close cases before a service plan has been developed or before the client has reached their goal; and
- to focus on the quality of a caseworker's decision making and compliance with program requirements.

The bill would require a caseworker's supervisor to use reviews of a caseworker's cases when conducting the caseworker's performance evaluation and for guidance in improving a caseworker's performance.

Monitoring of direct services programs. The bill would require staff members that do not provide direct services to monitor direct services programs from a statewide perspective. These staff members would collect, monitor, and analyze performance data and case review data regarding direct services programs and would report outcomes and trends to program managers and, as necessary, executive staff. Monitoring staff would work with direct services staff to develop objective and detailed outcome measures for the direct services programs.

CSHB 2463 also would allow DARS to conduct internal peer reviews of the department's field offices at regular intervals to assess their compliance with federal regulations and department policies and to compare their compliance with that of other offices.

Autism and comprehensive rehabilitation services

The bill would establish in statute two existing DARS programs, the Children's Autism Program and the Comprehensive Rehabilitation Services Program. The bill would require the HHSC executive commissioner to adopt rules for each program that provide:

- a system of organization for the delivery of services;

- eligibility requirements;
- the types of services the program may provide; and
- requirements for cost sharing by a client or client's family.

CSHB 2463 also would direct a state agency needing a waiver or authorization from a federal agency to implement a provision of the bill to request that waiver or authorization. The affected state agency could delay implementation of affected provisions in the bill until the agency received the waiver or authority.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 2463 would increase access to independent living services for those who need it, reduce unnecessary duplication of services, improve case and program oversight, and recognize in statute that autism services and comprehensive rehabilitation services are vital programs.

Transferring provision of all direct independent living services from DARS to centers for independent living (CILs) would increase access to independent living services across the state. DARS currently has heavy caseloads and waitlists for its independent living services, which supplement services provided by CILs. As a result, the agency struggles to provide services statewide. By contrast CILs have an extensive statewide network and specialized staff and already provide many of the same services as the agency, including home visits. Outsourcing independent living services to CILs and establishing that DARS' role would be to monitor the funding and performance of the services would ensure that services had better oversight and that consumers were better able to access services at the local level. Savings from the bill would help to expand the current array of services offered by CILs to meet the needs of all Texans with disabilities. The bill also would direct DARS to provide technical assistance, additional resources, and training to CILs' staff to ensure that CILs offer the same robust services as DARS and to smoothly transition provision of direct services from the agency to the centers.

In addition, the bill would reduce duplication of services by combining two independent living programs into one. The Independent Living Program for individuals who are blind or have visual impairments would

be integrated with the Independent Living Services Program for individuals with significant disabilities. Many of the services delivered by each program are similar and instead could be provided directly by CILs, as the bill would stipulate. Furthermore, CSHB 2463 would require DARS caseworkers to refer people seeking independent living services to CILs, which would ensure that individuals seeking services could find them.

The bill would increase case oversight of its direct services program to control spending and ensure effective delivery of services. By creating clear guidelines for case management, caseworkers would be better able to make good decisions that lead to successful, cost-effective outcomes. Moreover, CSHB 2463 would improve the agency's ability to monitor direct services programs by instructing staff that do not provide direct services to analyze performance data and case review data for all of the direct services programs. These data could be used to track the agency's progress on addressing its priorities, provide clear feedback to staff, and hold staff accountable for meeting goals.

The bill also appropriately would codify the agency's autism and comprehensive rehabilitation programs, each of which has been effective, cost-efficient, and successful. Establishing the programs in statute and keeping the Children's Autism Program at a health agency such as DARS would be important in recognizing autism as a clinically diagnosed disorder and in retaining sec. 1115 waiver funds if needed. Identifying these key services in statute and allowing DARS to continue administering them would provide maximum value to Texas.

The short transition period in the bill would minimize disruption of services to individuals with disabilities while providing enough time for CILs to expand their array of services, including those services previously delivered by the division of blind services at DARS. Many states provide independent living services through CILs rather than through a state agency, so providing services through CILs would not be unusual. The bill would not restrict services but instead would expand access to independent living services across the state. The bill is necessary regardless of its cost.

Amending the State Plan for Independent Living does not require

legislative action and is therefore not included in this bill.

The transition of vocational rehabilitation services to the Texas Workforce Commission is out of the scope of this bill and would be addressed by other Sunset bills.

OPPONENTS SAY:

CSHB 2463 would reduce access to independent living services, unnecessarily split up services for individuals who are blind or visually impaired, and make it harder for individuals with disabilities to find information about services provided by the state. Services for the blind and visually impaired should not be combined with other independent living services and should remain at DARS.

Combining the two independent living programs and outsourcing them to CILs would not provide the same level of exceptional services as is currently available at DARS. The bill also would not ensure that existing DARS caseworkers who have the necessary skills would transfer to the CILs under the new model. CILs do not have the same robust services or specialized staff as DARS, particularly for individuals who are blind or visually impaired. The low incidence of blindness in the population makes it very difficult to train staff at CILs all over the state to provide the level of specialized services that are needed to meet the unique needs of each individual. Individuals who are blind have different service needs and require differentiated attention to the specific way they learn. Services for individuals who are blind or deaf also are very different from services for individuals with an intellectual disability and require a specialized approach.

Traveling to a new center is difficult and frightening for older people who are blind or visually impaired, and the bill would not mandate that CILs provide services directly in an individual's home, as DARS currently does. Separating services amongst DARS, CILs, and other agencies would make it difficult for individuals who are blind, deaf, or have both disabilities to learn about and access services at each agency.

The Texas State Plan for Independent Living also would need to be amended to reflect the transfer of all direct independent living services to CILs and the future transfer of duties from DARS to HHSC and the Texas Workforce Commission (TWC), which would take place if the other Sunset bills regarding DARS were enacted.

The savings in the bill – $70,177 – would be very low compared to how much the bill would disrupt services for individuals who are blind or visually impaired.

OTHER OPPONENTS SAY:

CSHB 2463 should move all blind services to the same agency if the goal of the Sunset Advisory Commission is consolidation. These services could be transferred to the TWC, instead of sending some services to CILs, some services to HHSC, and some services to the TWC, which would happen if all Sunset recommendations were enacted.

Splitting services across two or three agencies would make it harder for people who are blind or visually impaired to travel to and access services. All blind services should stay together at one agency so that blind services staff easily could collaborate, because collaboration is key to successful service provision. Keeping services at one agency also would ensure that families with young children and seniors easily could find information about available services provided by the state.

NOTES:

According to the LBB's fiscal note, CSHB 2463 would have a positive net impact of $70,177 in general revenue funds through fiscal 2017 associated with a reduction at DARS of 24 caseworkers.

Unlike the introduced bill, the committee substitute includes a provision that would continue DARS in statute until September 1, 2027, if HB 2304,

SB 200, or similar legislation were not enacted by the 84th Legislature and did not transfer the functions of the agency to the HHSC.

SUBJECT: Continuing TWIC, abolishing the Texas Skill Standards Board

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

VOTE: 6 ayes — Button, C. Anderson, Faircloth, Metcalf, Villalba, Vo

0 nays

3 absent — Johnson, Isaac, E. Rodriguez

WITNESSES: For — (*Registered, but did not testify*: Dana Harris, Metro 8 Chambers of Commerce; Stephen Minick, Texas Association of Business)

Against — None

On — Lee Rector, Texas Workforce Investment Council; (*Registered, but did not testify*: Faye Rencher, Sunset Advisory Commission)

BACKGROUND: **The Texas Workforce Investment Council (TWIC).** TWIC is a 19-member board under the Governor's Office responsible for planning, evaluating, and reporting on the Texas workforce system. Previously known as the Texas Council on Workforce and Economic Competitiveness, the council has existed since 1993.

TWIC assists the governor and Legislature on strategic planning and evaluation of the Texas workforce system. It coordinates with 24 workforce programs at the system's eight state agency partners. TWIC is tasked with promoting development of a well-educated and highly skilled workforce. Its responsibilities include developing strategic plans, monitoring education and employment outcomes, reporting to the governor and Legislature, researching emerging issues, and reviewing state and local workforce plans. It convenes quarterly or on the call of the chair or for specialized subcommittees and technical advisory committees.

The council is required by the federal Workforce Investment Act and the Workforce Innovation and Opportunity Act. To receive federal funding under the two acts, the state must have a statewide workforce investment

body to oversee workforce development activities. TWIC fulfills this role.

TWIC receives no state money but is funded with federal workforce dollars provided to its member agencies. Personnel costs are 76 percent of the council's total expenses, which were $808,669 in fiscal 2013.

Of TWIC's 19 members, 14 are appointed by the governor and represent business, labor, education, and community-based organizations. These members serve six-year terms. The remaining five are ex officio voting members and represent workforce partner agencies, such as the Texas Workforce Commission and the Texas Higher Education Coordinating Board. These members serve as long as they hold their designated positions. The council has 12 full-time staff members and receives administrative support from the governor's office.

TWIC is subject to the Texas Sunset Act and last underwent Sunset review under its former name, the Texas Council on Workforce and Economic Competitiveness, in 2003. It was continued under its new title by the 78th Legislature. The council is scheduled to expire September 1, 2015, unless continued by the Legislature.

The Texas Skill Standards Board (TSSB). TSSB is an 11-member advisory board of professionals established in 1995 to work with industry and education programs to develop a voluntary, statewide set of occupational skills standards and credentials for high-wage, high-demand occupations requiring less than a baccalaureate degree. TSSB has created a set of shared standards and has served as the intermediary between industry groups and community and technical colleges to develop degree programs and curricula that align with industry workforce needs. TSSB's role includes certifying programs and postsecondary institutions as offering industry-recognized skills training. TSSB also renews the certification of recognized education and training programs.

TSSB's 11 board members include seven representatives from the business community, two from labor, one from secondary education, and one from postsecondary education. Members are appointed by the governor and serve without term limits. TSSB is administratively connected to the Governor's Office and supported by one staff person who works for TWIC. Members are not paid but may receive compensation

from TWIC for expenses, such as travel expenses, related to their charge.

DIGEST:

HB 1606 would amend Government Code, ch. 2308 to continue TWIC until September 1, 2027. TSSB would be abolished and its authority and duties would be transferred to the TWIC, including:

- advising the governor and Legislature on developing a statewide system of industry-recognized skill standards and credentials for major skilled occupations that provide strong employment and earning opportunities and require less than a baccalaureate degree;
- validating and recognizing national skill standards to guide education, training, and certification of workforce skills;
- convening industry groups to develop skill standards and certification procedures for industries and occupations that lack them;
- assessing standards developed outside of Texas and abroad and promoting portability and mutual recognition of credentials and standards;
- encouraging use of the standards and credentials by employers; and
- providing annual reports on the council's duties to the governor, Legislature, and the Texas Workforce Commission's Division of Workforce Development.

The bill also would require that TWIC be reviewed during the same Sunset period as the Texas Workforce Commission.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

TWIC should be continued because it performs several important functions for both state operations and federal Workforce Investment Act and Workforce Innovation and Opportunity Act compliance. Not maintaining TWIC or a similar function could cost the state $160 million in federal workforce funds upon which many programs depend.

Apart from helping the state meet federal requirements, TWIC serves the Texas workforce system well. Requiring workforce partners to convene quarterly enables greater potential for partnership and strategic planning. The council's annual report on state and local workforce goals and

outcomes keeps everyone accountable for their respective roles in the workforce system. TWIC performs this essential function at no cost to the state because it is fully federally funded.

Texas is facing a considerable labor shortage and a misalignment between education and training and workforce needs. Any efforts to address this issue are beneficial and should be maintained.

TSSB should be abolished and its functions transferred to TWIC**.** TSSB has accomplished the bulk of its goals and its role now is predominantly administrative, such as renewing certified programs. The number of new programs and colleges seeking TSSB certification has dropped. Industry certification, which performs a similar function to the skill standards, is an emerging focus at the state and federal levels, making the TSSB standards less relevant and necessary.

Recently, the board has met only once or twice a year. It has abdicated certification renewal duties to the chair in an effort to minimize the need to meet and ease the delay for programs seeking certification, so only the chair is actively responsible for this duty. For the colleges, programs, students, and employers currently relying on the value of being certified by TSSB, TWIC would be well qualified to continue this important work and maintain the skill standards' reputation.

Abolishing TSSB eliminates the inefficiency of having two distinct workforce-related boards when one could perform both boards' functions and submit one report to the governor. TSSB's mission of aligning the workforce's skilled labor needs with education and training falls within the larger work of TWIC. The council's membership will ensure the continued input of stakeholders such as employers and educational institutions. TWIC also has statutory authority to convene advisory committees for more technical input as needed, just as TSSB does.

No significant staffing changes would result from dissolving TSSB and moving its duties to TWIC. For 15 years, one or two TWIC employees have staffed TSSB, while TWIC has performed the TSSB's administrative work.

Attaching TWIC to the Texas Workforce Commission's Sunset schedule makes administrative sense as it would ensure that the Sunset Advisory

Commission evaluated the entire workforce system at one time. The Texas Workforce Commission's programs make up the bulk of TWIC's portfolio.

While tying TWIC's Sunset review to the Texas Workforce Commission's schedule would be efficient and effective, TWIC still would benefit from remaining administratively separate from the commission. This separation allows TWIC to hold a neutral position as convener and evaluator of other agencies that operate workforce programs, such as the Texas Workforce Commission.

OPPONENTS SAY:

TSSB, which HB 1606 would abolish, performs an essential function for postsecondary institutions and students, ensuring graduates are able to enter the workforce with recognizable, certified credentials and skills training. Having this certification performed by an independent, third party like TSSB provides employers with the assurance that any graduate of these programs will have necessary, relevant training for today's workforce.

TSSB has gained national attention for its work, and many other states seek to emulate Texas' model. Texas is viewed as a leader in workforce development and tailoring education to stay ahead of labor market demands. Abolishing TSSB would remove incentives for companies to move to Texas to take advantage of this education and training system and could make the state less competitive.

Many stakeholders currently rely on TSSB standards to evaluate credentials and degrees of potential employees. Institutions frequently approach the board about creating certain training and education programs. Abolishing this board would leave many participating students, programs, and employers in limbo and unsure of their status.

The board's small size, independence, and lack of term limits have been assets for fostering long-term partnerships between education, industry, and the workforce. Moving TSSB's responsibilities to TWIC would turn those duties into another administrative task, rather than the strategic planning it is now. A larger agency with a broader focus such as TWIC may not be able to bring TSSB's level of attention and commitment to workforce partners and the system as a whole.

TSSB is a cost-effective planning body that does important work and whose members are unpaid. Texas needs to make sure that the education and training of its workforce are aligned with employment opportunities. The benefits and exposure for Texas that TSSB provides outweigh any savings in cost or administrative burden that eliminating the board would create.

NOTES:

The companion bill, SB 209 by Hinojosa, was approved by the Senate Natural Resources and Economic Development Committee, placed on the March 17 intent calendar, and not again placed on the intent calendar on March 19.

SUBJECT: Modifying HHSC's Office of Inspector General

COMMITTEE: General Investigating and Ethics — favorable, without amendment

VOTE: 7 ayes — Kuempel, Collier, S. Davis, Hunter, Larson, Moody, C. Turner

0 nays

WITNESSES: For — Jason Ray, Riggs and Ray; Maureen Milligan, Teaching Hospitals of Texas; (*Registered, but did not testify*: Mark Vane, Gardere Wynne Sewell LLP; Fred Shannon, Hewlett Packard; David Mintz, Texas Academy of General Dentistry; Bill Pewitt, Texas Association for Home Care and Hospice; Michelle Romero, Texas Medical Association)

Against — None

On — (*Registered, but did not testify*: John Adamo, Department of Family and Protective Services; Sarah Kirkle and Danielle Nasr, Sunset Advisory Commission)

BACKGROUND: The Texas Legislature created the Office of Inspector General (OIG) in 2003 as part of its reorganization of the health and human services (HHS) system. The office is subject to Sunset review but not abolishment.

Office structure. The office is a division of the Health and Human Services Commission (HHSC), but OIG largely operates independently, separate from HHSC. The office's inspector general is appointed by the governor to serve a one-year term.

Office function. OIG is charged with preventing, detecting, and investigating fraud, waste, and abuse throughout the HHS system. OIG has a wide variety of functions and performed 103,618 investigations, reviews, and audits in fiscal 2013. OIG includes five divisions: operations, compliance, internal affairs, enforcement, and chief counsel. OIG also directs the operation of the Health Insurance Premium Payment (HIPP) program, which reimburses a Medicaid-eligible person or family for the cost of commercial insurance premiums when those costs are less than the

cost of Medicaid services.

Funding. In fiscal 2014, OIG had 774 people on staff and a $48.9 million budget, which has increased by nearly 30 percent since 2011.

DIGEST:

Appointment of the inspector general. HB 3279 would require the executive commissioner of HHSC, rather than the governor, to appoint the inspector general. This change would apply to an inspector general appointed on or after September 1, 2015.

Definition of fraud. HB 3279 would change the definition of "fraud" in Government Code, sec. 531.1011(4) to specify that the term does not include unintentional technical, clerical, or administrative errors.

Time limits on investigations. The bill would require OIG to complete preliminary investigations of Medicaid fraud and abuse by the 45th day after the date the commission received a complaint or allegation or had reason to believe that fraud or abuse had occurred. It would require OIG to complete a full investigation by the 180th day after the date the full investigation began unless the office determined that more time was needed. Under the bill, if OIG determined that it needed more time, the office would have to notify the provider subject to the investigation of the delay and would have to specify why the office was unable to complete the investigation within the 180-day period. These changes would apply only to a complaint or allegation received on or after September 1, 2015. The bill would not require the office to give notice to a provider if notice would jeopardize the investigation.

Payment holds and provider notice. The bill would specify that a payment hold is a serious enforcement tool that the office imposes to mitigate ongoing financial risk to the state and that a payment hold would take immediate effect.

HB 3279 would require OIG to notify a provider affected by the payment hold within five days of imposing the payment hold. The bill would require that the notice given to the provider include a detailed summary of OIG's evidence relating to the allegation and a description of administrative and judicial due process rights and remedies. These

remedies would include providers' "option," rather than "right," to seek informal resolution, their right to seek a formal administrative appeal hearing, or both. The notice would have to include a detailed timeline for the provider to pursue these rights and remedies.

HB 3279 would specify under which circumstances OIG could impose a payment hold or could find that good cause existed not to impose a payment hold, not to continue a payment hold, to impose a partial payment hold, or to convert a full payment hold to a partial payment hold. OIG could not impose a payment hold on claims for reimbursement that a provider had submitted for medically necessary services and for which the provider had obtained prior authorization unless the office had evidence that the provider had materially misrepresented documentation of the provided services.

The bill would specify that OIG could impose a payment hold without notice to a provider only if a payment hold was needed to compel the provider to give records to OIG, when requested by the state's Medicaid fraud control unit, or on the determination that a credible allegation of fraud existed.

These changes would apply only to a complaint or allegation received on or after September 1, 2015. The executive commissioner of HHSC would have to adopt by March 1, 2016, the rules necessary to change the circumstances under which a payment could be placed on claims for reimbursement submitted by Medicaid providers.

Administrative hearings. HB 3279 would require OIG to file a request with the State Office of Administrative Hearings (SOAH) for an expedited administrative hearing regarding a payment hold within three days after the date the office received a provider's request for such a hearing. The bill also would require a provider to request an expedited administrative hearing within 10 days after receiving notice from OIG regarding a payment hold. Under the bill, SOAH would have to hold the expedited administrative hearing within 45 days after receiving a hearing request.

During expedited administrative hearings, the bill would:

- require the provider and the office each to limit testimony to four hours;
- entitle the provider and the office each to two continuances under reasonable circumstances; and
- require the office to show probable cause that the credible allegation of fraud that was the basis of the payment hold had an indication of reliability and that continuing to pay the provider would be an ongoing significant financial risk to the state and a threat to the integrity of the Medicaid program.

These changes would apply only to a complaint or allegation received on or after September 1, 2015.

SOAH hearing costs. HB 3279 would remove the requirement in existing law that OIG and the provider share costs of an expedited administrative hearing and instead would make OIG responsible for the costs of the hearing and make the provider responsible for its own costs incurred in preparing for the hearing. The bill also would remove the requirement in law that a provider advance a security payment for the costs of the hearing. These changes would apply only to a complaint or allegation received on or after September 1, 2015.

Continuation of payment holds. Under the bill, a SOAH judge would have to decide in an expedited administrative hearing if a payment hold should continue but could not adjust the amount or percent of the payment hold. The judge's decision would be final and could not be appealed. The bill would remove the ability of a provider subject to a payment hold to appeal a final administrative order. These changes would apply only to a complaint or allegation received on or after September 1, 2015.

Informal resolution process. HB 3279 would allow OIG to decide whether to grant a provider's request for a first or second informal resolution meeting. The bill would remove existing time requirements for when OIG would have to schedule the meeting or when the office would have to give notice of the meeting. The bill would require the informal resolution process to run concurrently with the administrative hearing process and would discontinue the informal resolution process once SOAH issued a final determination on the payment hold. These changes would apply only to a complaint or allegation received on or after

September 1, 2015.

Future Sunset review. The Sunset Advisory Commission would conduct a special-purpose review of the overall performance of OIG as part of its review of agencies for the 87th Legislature in 2021. OIG would not be abolished solely because it was not explicitly continued following the review.

Rules on OIG operation and duties. The executive commissioner of HHSC would set rules for opening and prioritizing cases. In addition, the executive commissioner would have to adopt rules detailing OIG investigation procedures and criteria for enforcement and punitive actions. These rules would include direction for categorizing provider violations according to the nature of the violation and for scaling resulting enforcement actions, taking into consideration the seriousness of the violation, the prevalence of the provider's errors, financial harm, and mitigating factors. The rules also would have to include a specific list of potential penalties. In addition, staff members not directly involved in OIG investigations would be required to review OIG's investigative process.

The bill would specify the duties of OIG regarding:

- investigations of possible fraud, waste, and abuse by certain managed care organizations;
- training and oversight of special investigative units established by managed care organizations;
- requirements for approving managed care organizations' plans to prevent and reduce fraud and abuse;
- evaluation of statewide fraud, waste, and abuse trends in the Medicaid program; and
- assistance to managed care organizations in discovering or investigating fraud, waste, and abuse.

Extrapolation review. HB 3279 would require OIG to review its investigative process, including its use of sampling and extrapolation to audit provider records. The bill would require the review to be performed

by staff who were not directly involved in OIG investigations.

Pharmacies subject to audits. HB 3279 would specify that a pharmacy has a right to request an informal hearing before the HHSC's appeals division to contest an audit that did not find that the pharmacy engaged in Medicaid fraud. The bill would require staff of the HHSC's appeals division, assisted by vendor drug program staff, to make the final decision on whether an audit's findings were accurate. It would disallow OIG staff from serving on the panel that makes a decision regarding the accuracy of the audit.

OIG would have to provide pharmacies under audit with detailed information, if OIG has access to it, relating to the extrapolation methodology used as part of the audit and the methods used to determine whether the Medicaid program overpaid the pharmacy.

By March 1, 2016, the executive commissioner of HHSC would have to adopt the necessary rules to implement these changes.

Audit or investigation reports. HB 3279 would allow a confidential draft report on an audit or investigation that concerned the death of a child to be shared with the Department of Family and Protective Services, but the draft report would remain confidential.

Participation in HIPP and managed care. The bill would repeal the prohibition on an individual's participation in both the Health Insurance Premium Payment Program (HIPP) and Medicaid managed care.

Federal waivers. HB 3279 would direct a state agency needing a waiver or authorization from a federal agency to implement a provision of the bill to request that waiver or authorization. The affected state agency could delay implementation of affected provisions in the bill until the agency received the waiver or authority.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

HB 3279 would help address management and due process concerns found during the Sunset review of the Health and Human Services Commission (HHSC). The bill would address issues in the efforts of the

Office of Inspector General (OIG) to detect and deter Medicaid fraud, waste, and abuse, including overzealous investigation of providers, an overly broad definition of fraud, and a lack of transparency. OIG's investigative processes lack structure, guidelines, and performance measures to ensure consistent and fair results. The bill would require OIG to undergo a special Sunset review in six years, remove the one-year gubernatorial appointment of the inspector general, and require the executive commissioner of HHSC to appoint and directly supervise the inspector general. These actions would help ensure the integrity of state health and human services programs and Medicaid fraud investigations.

Appointment of OIG. Current law requiring the governor to appoint the inspector general fosters confusion about whether the inspector general answers to the governor or the HHSC executive commissioner. Problems with this structure and its lack of clear accountability were illustrated by the inability of the HHSC executive commissioner to properly hold the inspector general accountable for overzealous Medicaid investigations and excessive spending on badges and other items.

HB 3279 would clear up this confusion by giving the executive commissioner of HHSC the authority to appoint and directly supervise the inspector general. The executive commissioner would maintain full oversight responsibilities for OIG's functions, removing any questions about the executive commissioner's authority and making the executive commissioner clearly accountable for OIG's performance, which is common in other state offices of inspector general. In cases of conflict of interest, OIG could refer those allegations to the Texas Rangers for investigation through the same mechanisms available to other state agencies.

Sunset review. Given the lack of data to fully evaluate OIG's performance, especially related to investigations, the bill would require OIG to undergo special review by Sunset in six years. Within that period, OIG should have a case management system and the ability to track data to better illustrate its overall performance and the effectiveness and efficiency of its processes. Because OIG does not have its own Sunset date, it is subject to review, but not abolishment. Any concerns that may emerge in the six years before the next review could be addressed at the

will of the Legislature and would not depend on this timeline.

Definition of fraud. By making the definition of "fraud" less broad and specifying that the definition does not include unintentional technical, clerical, or administrative errors, the bill would focus OIG's fraud investigations on those actually committing fraud and would help prevent resources from being wasted on providers who commit clerical errors. Previously, OIG cast too wide a net and spent time and money on investigating providers who made mistakes but were not committing fraud. Overzealous investigations based on a broad definition of fraud also caused communities with limited health resources to unnecessarily lose access to Medicaid providers.

Participation in HIPP and managed care. The bill appropriately would remove an outdated prohibition on the participation of an individual in both HIPP and Medicaid managed care to allow Medicaid clients in the HIPP program to access long-term care services and supports through Medicaid managed care.

Payment holds and provider notice. The bill would streamline the payment hold process to more quickly mitigate state financial risks and reduce any undue burden on providers. The timelines in the bill would increase efficiency in the payment hold and appeal processes. HB 3279 would ensure that providers were not subject to payment holds any longer than necessary. The bill also would clarify the intended serious nature of payment holds and would specify that payment holds should be reserved for significant events such as fraud and to compel the production of records. It would respond to concerns that OIG had used payment holds as a bargaining chip to encourage providers to settle their cases, even in cases that did not pose a significant financial risk to the state.

Rules on OIG operation and duties. HB 3279 would require rules for opening cases, prioritizing cases, prioritizing investigations, and scaling penalties to the nature of the violation, which would increase workload efficiency and investigation transparency, consistency, and fairness at OIG. The rules also would ensure that Medicaid providers were not overly penalized for less serious violations. The state needs a robust network of Medicaid providers, and scaling penalties to the severity of violations

would ensure that Medicaid providers' practices were not subjected to a payment hold for an unnecessarily long period of time.

Time limits on investigations. HB 3279 would require OIG to complete preliminary investigations within 45 days of receiving a complaint or referral, which would provide time for OIG to determine whether to refer the matter to the Medicaid fraud control unit for criminal prosecution and ensure that investigations were completed in a timely manner. Requiring a 180-day time limit on full-scale investigations and requiring OIG to notify the provider if an investigation took longer than 180 days would increase transparency for providers about the investigative process while ensuring the timely completion of investigations.

Informal resolution process. Turning informal resolution meetings before a payment hold hearing into an option rather than a statutory right would aid in streamlining the hearing process and making it more efficient. It also would bring the process more in line with comparable processes before Medical Board and Board of Nursing hearings. A provider still would have a right to two informal resolution meetings before proceeding to the hearing.

Extrapolation review. By requiring OIG to review its extrapolation methodology and provide its methodology to pharmacies subject to audits, HB 3279 would help ensure the integrity of the sampling and extrapolation methodology the office uses in its reviews. This provision also would respond to concerns over the improper use of the office's methodology.

SOAH hearing costs. OIG should cover costs of expedited administrative hearings to reduce the burden to providers in accessing due process. The bill still would require providers to cover their own costs in preparing for the hearing. This would align payment hold hearings with the standard state practice of requiring the agency to pay for SOAH hearings.

Pharmacies subject to audits. HB 3279 would make clear that pharmacies have the right to request a hearing to contest an OIG audit and would increase transparency by allowing pharmacies to review the methodology OIG used as part of the audit.

Utilization review. Issues related to utilization review at hospitals were not included in HB 3279 because they are outside of the bill's scope.

OPPONENTS SAY:

Appointment of OIG. HB 3279 unadvisedly would remove the appointment of the office's inspector general from the governor's responsibilities. The inspector general should continue to be appointed by the governor so that the position maintains an arm's length relationship with the HHSC executive commissioner. Retaining this arrangement would ensure accountability and independence in the position, with oversight of OIG being provided by the governor and the Legislature and OIG continuing to be accountable to the HHSC council. The executive commissioner still would have a great deal of oversight of OIG even without appointing the office's inspector general. The Legislature should not let an overreaction to recent overzealous investigations of Medicaid providers and excessive spending on staff furniture and badges lead to a change in this mostly sound appointment structure.

Sunset review. Given the important work done by OIG and the management and other concerns uncovered in the Sunset review, it would be more appropriate for OIG to undergo special review in three years rather than six. This would permit enough time for changes to be made without allowing any problems to get out of hand. The Legislature would have enough information to evaluate changes made by the bill and make any necessary adjustments.

Definition of fraud. The Medicaid program has had significant problems in the past with providers who were actually committing fraud, waste, or abuse and endangering the health of children. Limiting the definition of fraud might impair OIG's ability to investigate providers and find those who had legitimately committed fraud. The OIG does not order payment holds with enough frequency to significantly limit access to Medicaid providers or indicate that the definition of fraud is too broad.

Informal resolution process. The bill should not allow OIG to determine whether a provider should be granted an informal resolution meeting and should not remove timelines that were just recently added to code. These changes would make the informal resolution process less transparent and

slower.

SOAH hearing costs. The bill would remove recently added requirements in code for providers and OIG to share costs and provide for expedited administrative hearings. Providers agreed to share these costs and provide a security deposit for the cost of the hearing. Cost sharing would not pose an undue burden for providers.

Payment holds. The timeline proposed in the bill for how soon a provider would have to respond to notice of a payment hold is too short. Providers need more than 10 days to get billing sheets from the billing company in order to respond.

OTHER OPPONENTS SAY:

The bill should require OIG to use federal medical coding guidelines for utilization review regarding hospitals. Using federal medical coding guidelines in utilization review would increase consistency and accountability.

NOTES:

The companion bill, SB 207 by Hinojosa, was reported favorably as substituted from the Senate's Health and Human Services Committee on April 7.

SUBJECT: Authorizing tuition revenue bonds for higher education institutions

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — Zerwas, Howard, Clardy, Crownover, Martinez, Morrison, Raney, C. Turner

0 nays

1 absent — Alonzo

WITNESSES: For — Jeffrey Wiley, Greater Fort Bend Economic Development Council; (*Registered, but did not testify*: Eddie Solis, City of Arlington; Tom Tagliabue, City of Corpus Christi; Jeff Coyle, City of San Antonio; Virginia Martinez Schaefer, Dallas Regional Chamber; Matthew Geske, Fort Worth Chamber of Commerce; Max Jones, The Greater Houston Partnership; Chris Shields, San Antonio Chamber of Commerce; Mariah Ramon, Teaching Hospitals of Texas)

Against — (*Registered, but did not testify*: MerryLynn Gerstenschlager, Texas Eagle Forum)

On — John Sharp, Texas A&M University System; Michael Reeser, Texas State Technical College System; Robert Duncan, Texas Tech University System; Brian McCall, The Texas State University System; Paula Short and Chris Stanich, the University of Houston System; Lee Jackson, the University of North Texas System; William McRaven, The University of Texas System; (*Registered, but did not testify*: Billy Hamilton, Texas A&M University System; Susan Brown, Texas Higher Education Coordinating Board; Edward Ness, Texas Southern University; Jonathan Hoekstra and Isabel Weeden, Texas State Technical College; Roland Smith, Texas State University System; David Bradley, University of Houston-Downtown; Wayne Beran, University of Houston-Victoria; Richard Phillips, University of Houston System; Janet Waldron, University of North Texas System; Michael O'Donnell and Randy Wallace, the University of Texas System; Timothy Rychlec)

BACKGROUND: Tuition revenue bonds (TRBs) are financial instruments that higher

education institutions secure with pledged future revenue, such as tuition and fees, to fund capital projects. Institutions and their branches may use TRBs for certain projects outlined in Texas Education Code, ch. 55. These include purchasing, constructing, improving, enlarging, operating, or maintaining any property, buildings, structures, activities, services, operations, or other facilities. The Legislature must authorize the issuance of TRBs in legislation.

DIGEST:

CSHB 100 would authorize the issuance of $3.1 billion in tuition revenue bonds (TRBs) for institutions of higher education to finance construction and renovation of infrastructure and facilities.

The bonds would be payable from pledged revenue and tuition, and if a board of regents did not have sufficient funds to meet its obligations, funds could be transferred among institutions, branches, and entities within each system. The bill would authorize TRBs for individual institutions and projects for the following universities and university systems:

- Texas A&M University System ($805.8 million);
- University of Texas System ($927.6 million);
- University of Houston System ($362.5 million);
- Texas State University System ($256.4 million);
- University of North Texas System ($269 million);
- Texas Tech University System ($250.2 million);
- Texas Woman's University ($38 million);
- Midwestern State University ($58.4 million);
- Stephen F. Austin University ($46.4 million);
- Texas Southern University ($60 million); and
- Texas State Technical College System ($41.7 million).

CSHB 100 would not affect any authority or restriction on the activities an institution of higher education could conduct in connection with facilities financed by the TRBs.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 100 would authorize tuition revenue bonds (TRBs) that would be essential for the state's higher education institutions to build and maintain

facilities, provide for enrollment growth, and remain competitive. Since their inception, TRBs successfully have funded capital construction projects at institutions of higher education.

These bonds are a cost-effective way to fund projects such as new labs and classrooms that are not likely to be funded by other means. Without TRB funding, institutions would have to fund capital construction projects in other ways, such as by raising tuition. Other funding mechanisms, such as the Permanent University Fund (PUF) and the Higher Education Fund (HEF), are limited in their ability to help institutions fund needed capital growth and facilities upgrades. The long-term financing structure provided by TRBs allows for larger projects. Private contributions can take a long time and are competitive, which puts smaller colleges at a disadvantage. In addition, these donations typically come with stipulations on how they may be used. TRBs are the best option for funding capital construction projects, as other alternatives have failed to gain traction.

Authorizing TRBs for new facilities at the state's universities also would accommodate enrollment growth, allowing more Texans to pursue higher education. Texas institutions have experienced rapid increases in enrollment over the past decade, in part due to statewide initiatives that encourage postsecondary education. Texas' population is expected to grow even more in coming years, and this growth will further strain the state's existing infrastructure. Institutions could admit more students and make higher education more attainable if they were able to build new facilities.

The TRBs provided in this bill would be a good investment for the state because they have a high return. The bonds would be used to expand and improve facilities, including science and engineering research labs. Research and development at universities benefit all taxpayers, not just students. Moreover, investment in state-of-the-art facilities would help attract high-caliber students pursuing science, technology, engineering, and mathematics (STEM) degrees. Graduates of STEM programs earn higher wages, which benefits the state in tax revenue. The Texas Workforce Commission has projected a workforce shortage in STEM-related jobs, and schools have focused on improving their abilities to meet these needs.

No new TRBs have been authorized since 2009, when the Legislature issued $155 million in bonds largely to repair hurricane damage at the University of Texas Medical Branch at Galveston. The last major statewide authorization was in 2006, when HB 153 by Morrison authorized $1.9 billion for projects at 47 institutions. Institutions, some of which have fallen behind high schools in the quality of their facilities, have put off needed repairs and construction since that time. Now is an opportune time to fund TRB requests because interest rates and construction costs are relatively low and the state has enough money to fulfill many of the institutions' capital construction needs.

TRBs do present a cost to the state, but they are no different from other investments the state makes in legislative priorities. All debt involves risk, and financing for any state program is the responsibility of future lawmakers. To demonstrate that higher education is a state priority, the Legislature typically appropriates general revenue funds to reimburse institutions for the tuition spent toward debt service on TRBs. In addition, while there is no guarantee the Legislature will authorize TRBs each session, any state-funded program or entity must plan for the future while facing uncertainty about whether the Legislature will approve its funding.

Although online learning has grown, there is no consensus on whether it should replace classroom learning. A need still exists for construction of facilities such as labs, where students need to engage in applied learning that cannot be done online, and professor interaction is an important part of education. The investment in a building that could last several years and serve many students also may yield a better value than technology that must be upgraded every few years and that requires students to buy new computers and software.

CSHB 100 would demonstrate necessary fiscal discipline by not fully funding all of the TRB requests made this session. TRB authorizations for larger universities in the bill reflect that these schools serve larger student populations, but smaller schools, particularly newer campuses, also would receive needed support in the bill.

Gov. Abbott has made clear that he wants more Texas higher education institutions to be top research universities. CSHB 100 would invest meaningfully in building and improving facilities at the state's

universities, which would help attract renowned faculty members and researchers. Texas institutions must improve to compete — not only with one another or with those in other states but globally.

OPPONENTS SAY:

CSHB 100 would result in a massive sum of debt from TRBs that would be risky both for taxpayers and institutions of higher education. TRBs promised by one Legislature cover only a portion of the cost of projects, and the remaining debt becomes the responsibility of future legislatures and taxpayers. About $2.2 billion of the debt from previously issued TRBs still was outstanding as of August 31, 2014.

TRBs are less than ideal for the institutions, the state, and taxpayers. They are unreliable for long-term project planning because institutions cannot predict whether their TRB requests will be authorized. Additionally, institutions tend to request bonds for new construction rather than for deferred maintenance in making their TRB plans. Leaving maintenance projects unaddressed results in outdated, low-quality facilities that deter high-quality students from enrolling and that hinder achievement of current students. Furthermore, any amount of TRB debt that an institution incurs that cannot be covered by tuition increases would be shifted to another institution within that system or absorbed by taxpayers if the Legislature used general revenue to pay for the debt service.

TRBs reimbursed by general revenue place the cost of these projects on the taxpayers, instead of the institutions and students who benefit from them. These bonds can be likened to writing the institutions a blank check with taxpayer money because they may be approved without a vote, which sometimes is required for other state-issued debt.

The state has many demands that compete for limited resources, and higher education institutions and lawmakers should be creative and proactive in funding capital projects. Formula funding for state universities, if used carefully, is enough to cover the needs of higher education institutions. The amount of money authorized in CSHB 100 would be significant, and the bill would provide for projects and facilities that are unnecessary. The recent lack of TRB funding has yielded unexpected benefits, such as schools being resourceful and making do with less. For example, online learning has expanded. The state and universities should invest more in online education, which does not rely

heavily on capital construction funding.

The Legislature should consider alternative funding methods for meeting requests for construction projects. Outcomes-based funding as a supplement to formula funding would ensure that schools focused on specific educational outcomes, such as graduation rates, to secure additional state funds. Alternatives to TRBs include creating a direct appropriation from the state's budget or the Economic Stabilization Fund, establishing public-private partnerships, creating higher education funding districts, or authorizing general obligation bonds.

CSHB 100 would continue to authorize a funding source that does not operate as taxpayers may expect. The Legislature often reimburses the institutions for debt from TRBs with general revenue, rather than the institutions covering the debt with tuition and fees. The state should use a more transparent mechanism for funding capital construction projects at universities.

OTHER OPPONENTS SAY:

Although CSHB 100 issues TRBs for many needed projects, the $3.1 billion is not enough to address institutions' full request of $5.6 billion for fiscal 2016-17.

In addition, CSHB 100 authorizes TRBs for several labs and research facilities, but STEM is not the only area that needs focus and development. Other degree programs can lead to high wages and steady employment, and the state should invest in these other disciplines through TRB projects.

Larger institutions, including Texas A&M and the University of Texas, always receive a large share of higher education funding, but TRBs and other funding mechanisms should address needs at smaller campuses that also play an important role by educating many first-generation college students and adult learners.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have fiscal implications for the state. The cost of reimbursing institutions for tuition used to pay debt service on the TRBs would have a net negative impact on general revenue funds of $540.3 million through fiscal 2016-17.

The House Appropriations Committee's proposed budget for fiscal 2016-17 would appropriate $250 million for one year of debt service on TRBs contingent on enactment of CSHB 100 or similar legislation.

CSHB 100 would authorize about $270 million more for TRBs than HB 100 as introduced would have authorized.

Two companion bills, SB 21 by Zaffirini and SB 245 by Watson, were referred to the Senate Higher Education Committee. Another bill that would authorize TRBs, SB 150 by Seliger, was placed on today’s intent calendar in the Senate. The House companion to SB 150, HB 812 by Lozano, was referred to the House Higher Education Committee.