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Major Issues of the 88th Legislature

During its 2023 regular and four called special sessions, the 88th Texas Legislature passed 1,252 bills and adopted 14 joint resolutions after considering 8,616 measures filed.

This report highlights some of the major issues considered during the session. It summarizes some proposals that were approved and others that were not, including certain bills vetoed by the governor. The report also includes arguments offered for and against each measure as it was debated during the session.

Proposals considered by the Legislature included revising the property tax system and the school finance system, addressing border security and school safety, and revising state policies on gender-related health care and the electric grid, among other topics. The Legislature also approved a state budget for the fiscal 2024-25 biennium and continued numerous agencies after their review by the Sunset Advisory Commission. The legislation featured in this report is a sampling and not intended to be comprehensive.

Other House Research Organization reports covering the 2023 session include those examining the state budget, summarizing how a bill becomes law, and the constitutional amendments on the November 7, 2023 ballot.

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Bills in the 88th Legislature, Regular Session

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	Introduced	Enacted	Percent enacted
House bills	5,413	744	13.7%
Senate bills	2,633	502	19.1%
TOTAL bills	8,046	1,246	15.5%
House joint resolutions	206	7	3.4%
Senate joint resolutions	93	6	6.5%
TOTAL joint resolutions	299	13	4.3%

Includes 77 vetoed bills — 23 House bills and 54 Senate bills

	2021 (87th Legislature)	2023 (88th Legislature)	Percent change
Bills filed	6,927	8,046	16.2%
Bills enacted	1,073	1,246	16.1%
Bills vetoed	21	77	266.7%
Joint resolutions filed	221	299	35.3%
Joint resolutions adopted	8	13	62.5%
Legislation sent or transferred to House Calendars Committee	1,624	1,775	9.3%
Legislation sent to House Local and Consent Calendars Committee	869	1,028	18.3%

Source: Texas Legislative Information System, Legislative Reference Library

Vetoes of Legislation: 88th Legislature

Gov. Greg Abbott vetoed 76 bills approved by the 88th Legislature during the 2023 regular legislative session. The vetoed bills included 22 House bills and 54 Senate bills. The governor also vetoed an item in the General Appropriations Act. A list of vetoed bills, including the governor's veto statement for each bill, can be found at https://www.lrl.texas.gov/legis/Vetoes/lrlhome.cfm.

Vetoes related to property tax relief or education freedom. For 44 of the vetoed bills, the governor's veto proclamation stated that while the bill was important, it was not as important as cutting property taxes and that the bill could be reconsidered in a future special session only after property tax relief was passed. For six bills, the governor's veto statement also cited reasons related to property tax relief in addition to other reasons given for the veto.

The governor's veto proclamation for nine bills stated that while the bill was important, it was not as important as education freedom or that the bill could be reconsidered in a future special session only after education freedom was passed.

General Appropriations Act veto. Article 4, sec. 14 of the Texas Constitution authorizes the governor to veto one or more items in an appropriations bill. During the 88th Legislature, the governor vetoed an item of the General Appropriations Act, **HB 1** by Bonnen, stating that the veto deletes a contingency rider for a joint resolution that did not pass (**SJR 81** by Birdwell).

The governor also stated that: "Before turning to the objectionable item of appropriation in House Bill No. 1, I must note that Section 17.36 of Article IX is unconstitutional. Section 17.36 purports to tell the Lottery Commission that it must issue a new rule on a particular subject. This attempt to make general law in the General Appropriations Act violates Article III, Section 35 of the Texas Constitution. A similar command to the Lottery Commission was proposed in Senate Bill No. 1820, but the Legislature did not pass that bill."

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*Finally approved

Establishing the right to engage in certain agricultural practices

HJR 126 by Burns
Effective November 7, 2023

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HJR 126 amends the Texas Constitution to establish the right to engage in generally accepted farm, ranch, timber production, horticulture, or wildlife management practices on real property that a person owns or leases. The resolution does not affect the authority of the Legislature to authorize regulation of these practices by:

- a state agency or local authority when there is clear and convincing evidence that the regulation is necessary to protect public health from imminent danger;
- a state agency to prevent a danger to animal health or crop production; or
- a state agency or local authority to conserve the state's natural resources.

The resolution does not affect the authority of the Legislature to authorize the use or acquisition of property for a public use, including development of the state's natural resources.

The ballot proposal was approved by voters at an election on November 7, 2023, and read: "The constitutional amendment protecting the right to engage in farming, ranching, timber production, horticulture, and wildlife management."

Supporters said

By establishing Texans' right to engage in certain generally accepted agricultural practices, HJR 126 would provide necessary protection for the state's essential agricultural operations. As the Texas population continues to grow and the demand for food increases, it is important to prevent municipal overregulation that could threaten agricultural production. HJR 126 would ensure that entities attempting to restrict an agricultural practice provided clear and convincing evidence of the dangers or harms being posed by the practice. Given the significant loss of farm and ranch land across the state to other uses over the past two decades, landowners and lessees need the property rights protection that this resolution would provide. The resolution would not just protect large farms, but also small family-owned farms, which make up the majority of farms in the state.

Additionally, the resolution would recognize the authority of the state or a political subdivision to protect the state's natural resources, including water quality. HJR 126 would not compromise the state's ability to address public health and animal welfare concerns.

Critics said

By limiting local communities' and state legislators' abilities to set reasonable standards regarding food safety, water pollution, and animal welfare, HJR 126 would enable large, industrial factory farms to operate with less accountability, which also could undermine smaller family farms.

The requirement that the threat to health and safety be "imminent" could hinder entities' ability to regulate agricultural operations that could pose a threat to public safety during a natural disaster until it was too late. In addition, the burden of proof of clear and convincing evidence required by the resolution is too high. Requiring government entities to demonstrate that a regulation was necessary by a preponderance of the evidence would be a better standard of proof.

Notes

The HRO analysis of HJR 126 appeared in the April 10 *Daily Floor Report*.

Other bills considered this session, including **HB 1750** by Burns and **HB 2308** by Ashby, also limit municipal regulation of and nuisance actions against agricultural operations. These two bills went into effect September 1, 2023. The HRO analyses of HB 1750 and HB 2308 appeared in the April 10 *Daily Floor Report*.

Regulating the collection and processing of certain personal data

HB 4 by Capriglione
Effective July 1, 2024

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HB 4 establishes certain restrictions, consumer rights, and state oversight related to the sale and processing of consumer personal data. The bill applies to a person who conducts business in the state and engages in the sale and processing of personal data. The bill does not apply to:

- state agencies and political subdivisions;
- financial institutions or data subject to certain financial regulations;
- non-profits;
- a covered entity or business associate governed by federal privacy laws related to health care information and electronic health records;
- higher education institutions; or
- an electric utility as defined in statute.

HB 4 applies to small businesses, as defined by the United States Small Business Administration, in circumstances where a small business is selling sensitive personal data and requires the consumer's consent before selling.

Controller duties. HB 4 limits the collection of personal data by a controller, or an individual who determines the purpose and means of processing data, to what is adequate, relevant, and necessary for the purpose for which the data is collected, as disclosed to the consumer. A controller may not process personal data for a purpose that is unnecessary to or incompatible with the originally disclosed purpose unless the consumer's consent is first obtained. A controller also may not process sensitive data without a consumer's expressed consent. A controller is required to implement appropriate security practices to protect consumers' personal data and may not discriminate against a consumer in exercising certain consumer rights.

If a controller sells personal data to a third party or processes personal data for targeted advertising, the controller is required to clearly disclose the process and how a consumer may opt out.

A controller is required to post accessible and clear privacy notices that include certain information regarding consumers' rights and what personal data will be processed. If the controller sells sensitive or biometric data, the controller is required to post a specific notice that the consumer's data may be sold.

Consumer requests and controllers' duties do not apply to pseudonymous data, defined as information that can not be attributed to a specific individual without the use of additional information, if the controller can prove that any information necessary to identify the consumer is kept separately and is subject to effective controls. A processor, who is a person that processes data on behalf of a controller, is required to adhere to the instructions of a controller and assist in meeting or complying with the controller's duties or requirements under the bill.

Data protection assessment. A controller is required to conduct a data protection assessment of each of the following processing activities:

- the processing of personal data for targeted advertising;
- the sale of personal data;
- the processing of personal data for profiling that presents certain foreseeable risks;
- the processing of sensitive data; and
- activities that present a heightened risk of harm to consumers.

The data protection assessment is required to weigh the benefits of the processing activity against the potential risks to the rights of the consumer, including any safeguards that can mitigate risk. The assessment also is required to factor in the use of deidentified data (data that can not be reasonably linked to an identified individual or the individual's device), the reasonable expectations of consumers, the context of the processing, and the relationship between the controller and the consumer.

The controller is required to make a data protection assessment available to the attorney general if requested as part of an investigation. The assessment is confidential and exempt from public inspection and copying.

Deidentified data. Under the bill, a controller with deidentified data must take reasonable measures to ensure that the data cannot be attributed to an individual, publicly commit to maintaining and using the data without trying to re-identify it, and contractually obligate any recipient of deidentified data to comply with the bill.

Consumer rights. HB 4 entitles a consumer to request from a controller certain information related to the possession and processing of personal data. A parent or legal guardian also may exercise these consumer rights on behalf of a child.

A controller must comply with an authenticated consumer request to exercise the right to:

- confirm whether a controller is processing the consumer's personal data and to access the personal data;
- correct inaccuracies in the consumer's personal data;
- delete personal data provided by or obtained about the consumer;
- obtain a copy of the consumer's personal data in a format that allows the consumer to transmit the data to another controller; or
- opt out of the processing of the personal data for certain purposes related to targeted advertising, the sale of data, and profiling.

The bill requires that a controller provide information in response to a consumer's request free of charge at least twice a year per consumer. If a consumer request is proven to be excessive, the controller may charge an administrative fee or decline the request. The bill establishes requirements for the methods by which a consumer may submit a request and how the denial of a request may be appealed.

A consumer may designate another person to serve as the consumer's authorized agent and act on the consumer's behalf to opt out. Once the controller has verified the identity of the consumer and the authorized agent's authority to act on the consumer's behalf, the controller is required to comply with such a request.

Investigative authority. The attorney general has exclusive authority over enforcement of the bill and is required to post on the attorney general's website the responsibilities of controllers and processors, consumers' rights, and a way for consumers to submit complaints to the attorney general online. If the attorney general believes that a person has engaged in or is engaging in a violation of the bill, the attorney general may issue a civil investigative demand. The attorney general may request that a controller disclose a data protection assessment that is relevant to an investigation and evaluate the assessment for compliance.

Before enacting a civil penalty, the attorney general is required to notify the person to identify the specific violation no later than 30 days before bringing an action. The attorney general may not bring an action if, within the 30 day period, the person cures the violation and provides a written statement to the attorney general stating that the person has taken certain actions to cure the violation and to ensure that no such further violations will occur.

If a person commits a violation of the bill following the cure period or breaches a written statement provided to the attorney general, the person is liable for a civil penalty of up to $7,500 per violation. The attorney general is authorized to bring an action to recover a civil penalty, restrain the person from violating the chapter, or recover a civil penalty and seek injunctive relief. The attorney general may recover attorney's fees and expenses incurred and is required to deposit the civil penalty into the state treasury for allocation to the judicial fund.

If a controller discloses data to a third party and the third party violates the bill, the controller is not held in violation. Additionally, the third party is not in violation of the bill if the third party receives personal data from a controller and the controller violates the bill.

Exemptions. The bill exempts certain data, including:

- certain protected health information;
- health records;
- data collected from human subjects as part of clinical research;
- certain other health care-related information;
- data processed for the purpose of a job application;
- data processed or maintained as part of an emergency contact; and
- certain data regulated by federal law, including the Health Insurance Portability and Accountability Act, the Driver's Privacy Protection Act, the Family Educational Rights and Privacy Act, the Fair Credit Reporting Act, and the Farm Credit Act.

Supporters said

HB 4 would give consumers the rights and protections they need to keep their personal data secure by establishing stronger data privacy regulations. Currently, a lack of regulation on the selling and collection of personal data allows bad actors to obtain data for criminal purposes while also allowing companies to use targeted advertising and profiling at consumers' expense. The bill would give consumers the right to reclaim their personal data by regulating the data that may be processed by data controllers. The bill also would help to protect sensitive data, ensuring that the data that made consumers most vulnerable could not be sold or processed without their consent.

HB 4 would implement strong enforcement mechanisms through the attorney general's office to hold companies who violated consumer rights accountable and make the process more transparent for consumers. Under the bill, consumers could file complaints through the attorney general's website, which would help ensure Texans' complaints and voices were heard throughout the process.

The bill also would keep compliance costs low by streamlining the process through which complaints were filed. Additionally, small businesses would be exempt from many of the bill's provisions, allowing them to continue to connect with their customers without being burdened by compliance costs.

Critics said

HB 4 should mirror data privacy legislation from other states to limit companies' need to navigate different state laws and keep compliance costs to a minimum.

Other critics said

The bill should do more to protect Texans' data from being collected and sold. Giving a controller up to 90 days to respond to a consumer request could allow the data to exchange hands many times, which could make it less accessible to consumers. Additionally, consumers would be required to submit a request to every website that used their data, which could make regaining control of one's personal information more difficult. The bill should include a universal opt-out provision allowing consumers to opt out of the processing, collection, and sale of their personal data across sites.

Notes

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

Authorizing certain economic development incentives

HB 5 by Hunter
Generally effective January 1, 2024

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HB 5 creates an economic development incentive called the Texas Jobs, Energy, Technology, and Innovation Act (JETI) that allows a school district and the governor to enter into an agreement to temporarily lower school district maintenance and operations (M&O) property taxes for entities that undertake certain large-scale development projects in the district.

During a designated ten-year incentive period for each eligible project, the taxable property value for school district M&O property tax purposes is reduced to either:

- 50 percent of the market value of the property for the tax year; or
- 25 percent of the market value of the property for the tax year if the property is located in a qualified opportunity zone designated by the United States Treasury.

The incentive period may not begin before January 1 of the first tax year following the project construction completion date and lasts for ten consecutive tax years. The incentive period may be deferred until January 1 of the second tax year without affecting the end date of the incentive period if the applicant projects that it will not satisfy applicable minimum investment requirements by the end of the first tax year. The bill also establishes provisions for an applicant to modify an incentive period with comptroller approval. During an allowed construction period preceding the incentive period, the taxable property value for school district M&O property tax purposes is zero.

Eligible projects include the construction or expansion of critical infrastructure or the construction of a new or expansion of an existing facility that is:

- a manufacturing facility;
- related to a utility service, including an electric generation facility with dispatchable energy;
- related to the development of a natural resource; or
- engaged in the research, development, or manufacture of high-tech equipment or technology.

Projects that include a non-dispatchable electric generation facility or an electric energy storage facility are not eligible projects.

Project investment and jobs. By the end of the first tax year of the incentive period, applicants must agree to fulfill minimum job creation and project investment requirements, based on the population of the county in which the project is located as follows:

County Population	*Minimum Required Jobs*	*Minimum Required Investment*
750,000+	75	$200 million
250,000-750,000	*50*	$100 million
100,000-250,000	35	$50 million
< 100,000	10	$20 million

Projects related to electric generation facilities are exempt from job creation requirements.

After the first tax year of the incentive period, projects must demonstrate an average of at least the same number of agreed-upon jobs for each following tax year until the agreement expires.

Required jobs created in connection with an eligible project must be new permanent, full-time jobs in Texas that require a total of at least 1,600 hours of work devoted to the eligible project each year. Construction jobs do not qualify as full-time jobs for eligibility purposes. Required full-time jobs also must be maintained in the usual course or scope of the applicant's business and may not be transferred from an existing facility or location in Texas unless the applicant fills the vacancy caused by the transfer. Full-time jobs that are performed by independent

contractors and their employees at the project site and that meet these qualifications may also be considered a required job for an eligible project.

An agreement entered into by the governor, a school district, and an applicant must require that the average annual wage paid to all employees connected to an eligible project exceeds 110 percent of the average annual wage for all jobs in the applicable industry sector as calculated by the Texas Workforce Commission. Applicants also must offer and contribute to a group health plan for all full-time employees.

Application and fees. Project applications must include certain information on the proposed project and its location, investment, and jobs and be submitted to the comptroller along with a map of the project site and application fees payable to both the comptroller and the school district, respectively.

Economic benefit statement. An economic benefit statement must be submitted with the application and must include information on project estimates for each year beginning with the date the construction phase begins and ending on the 25th anniversary of the date the incentive period ends. The economic benefit statement must include estimates of:

- the total number of jobs that will be created;
- the total amount of capital investment that will be created;
- increases in the appraised value of property attributable to the project;
- the amount of property taxes that will be imposed on project property by each taxing unit, including the applicable school district;
- the amount of state taxes that will be paid in connection with the project; and
- associated economic benefits that may reasonably be attributed to the project.

Additional project information. The comptroller also may request that an applicant provide any additional information reasonably necessary to evaluate the application.

Project approval. The comptroller is required to notify applicants when an application is administratively complete. Within 60 days of determining that an application is complete, the comptroller must determine whether to recommend or not recommend an application for approval. The comptroller may not recommend an application for approval if:

- the proposed project is ineligible;
- the project is not likely to generate state or local tax revenue in an amount sufficient to offset, within 20 years, the school district M&O property tax revenue lost as a result of the agreement;
- the agreement is not a compelling factor in a competitive site selection; and
- if the project proposes to locate in an opportunity zone and is not located in that zone.

The bill requires information on recommended projects to be sent to the governor's office and the applicable school district. Within 30 days of receiving an application from the comptroller, each entity must take official action to determine whether they will enter into the agreement. The district must hold a public hearing on the application prior to making a final decision to enter into an agreement.

Agreement. Agreements for approved projects must be signed by the governor, the governing body of the school district, and the applicant, and must specify:

- the project to which the agreement applies;
- the terms of the agreement;
- the construction and incentive periods for the project;
- applicable job, wage, and investment requirements and corresponding compliance provisions;
- penalties that could be assessed if the applicant does not comply with the job or wage requirements;
- group health plan coverage requirements; and
- authorization for the governor or the district to terminate the agreement if the applicant does not comply with applicable job or wage requirements after a required notice and cure period has been provided to the applicant.

Agreements also must contain provisions prohibiting the applicant from making a payment to the district related to the agreement.

When the applicant executes an agreement, an applicant also must execute a performance bond in an amount the comptroller determines to be reasonable and necessary to protect the interests of the state and school district.

Penalties. Projects unable to maintain the number of agreed-upon required jobs or meet annual wage

requirements for four consecutive years will be assessed a penalty based on terms specified in the bill.

The governor and the school district also may terminate an agreement if a project is unable to meet job and wage requirements. Such projects will be assessed a penalty equal to all lost property tax revenue from the project and interest. The comptroller must deposit any penalties collected to the credit of the foundation school fund.

Audits, compliance reports, and project information. The state auditor is required to review at least 10 percent of agreements in effect each year and evaluate whether each agreement accomplishes the bill's purposes and whether the terms of the agreements were executed in compliance with state law.

Applicants must submit a report biennially to the comptroller that includes information related to project jobs and wages, the total project investment, the appraised value of all project property, the amount of any property tax paid, and the amount of property tax that would have been imposed on the property for school district M&O taxes if the agreement was not in place.

The comptroller is required to submit a biennial report to the governor, lieutenant governor, and the Legislature that aggregates the information provided in the required project reports by December 1 of each even-numbered year.

The comptroller also must post certain application information and materials, agreements, and biennial compliance reports on e Comptroller's website.

School district funding. HB 5 revises certain school funding formulas in current statute to allow school districts to be reimbursed by the state for M&O property tax revenue lost due to an incentive agreement under the bill and agreements made under former Tax Code Chapter 313 that were in effect on January 1, 2023.

Oversight committee. HB 5 creates the legislative Jobs, Energy, Technology, and Innovation Act Oversight Committee consisting of members of each chamber of the Legislature. At least one member appointed by each chamber must represent a district that includes a county with a population of 100,000 or less. The committee may recommend revisions to the definition of an eligible project.

Supporters said

HB 5, known as the Jobs, Energy, Technology and Innovation Act (JETI), would create an innovative, transparent, and accountable economic development program to attract jobs and investment to Texas. Through the competitive tax incentives established in the bill, school districts could temporarily limit the taxable value of eligible property for maintenance and operations (M&O) property tax purposes in exchange for the property investment and new jobs created by an eligible project.

Tax abatement. The bill would provide for competitive economic incentives that are necessary to attract large-scale economic development projects to Texas. According to the Texas Taxpayers and Research Association, 44 states have tax structures more favorable to business than Texas. In recent years, several multibillion-dollar projects that were offered deals in Texas have chosen to establish themselves in other states. Without a more competitive incentive plan, the critical infrastructure and manufacturing businesses that Texas hopes to attract could choose to locate elsewhere.

The revenue generated from each new project under the bill would benefit both the state and local communities and foster the long-term growth of their respective tax bases. Furthermore, the large commercial projects supported by the incentive program would diversify the tax base, easing the tax burden on homeowners while simultaneously bringing in additional tax dollars for infrastructure such as emergency services and roads. The school district M&O property tax incentive would be available only for those projects that could demonstrate that the incentive was the determining factor in choosing where to locate the project, creating a safeguard against providing financial compensation to companies that were already likely to relocate to Texas.

School districts. To ensure schools did not lose funding, HB 5 would require the state to reimburse districts for any property tax losses related to a tax incentive agreement. Additionally, though M&O property taxes would be reduced for successful projects, these projects would still pay a designated portion of M&O taxes, all other school district property taxes, and applicable state and local taxes. This would protect the interests of both the state and participating school districts by ensuring that projects paid all remaining taxes due during the incentive period and that the tax burden was not shifted from the projects to taxpayers.

HB 5 also would address inequities created by

previous incentive programs by prohibiting projects from making supplemental payments directly to school districts in addition to or in lieu of their property tax obligations. These additional payments had been allowed under prior economic development programs, creating disparities among school districts by providing additional cash flow and resources to some districts that were not available to others. By prohibiting these payments, HB 5 would create a more equal and transparent system while still accounting for any tax revenue lost by the districts.

Grid reliability. The bill would provide a strong avenue for the state to improve grid reliability by prioritizing projects that grow the state's access to dispatchable energy capable of quickly and reliably supplying power during periods of peak demand. Grid reliability projects under the bill would be required to meet all investment requirements and would be subject to federal EPA requirements that apply to the construction of energy facilities. While HB 5 would limit tax incentives to projects able to produce dispatchable energy, it would not prohibit renewable energy organizations from expanding or establishing new renewable energy facilities in the state. Renewable energy projects, which are eligible for federal subsidies and incentives, would still be able to move forward in any area willing to accept the project.

Accountability. The biennial reports and comptroller audits required by the bill would improve transparency about the use of state incentive dollars to reimburse school districts and more clearly depict the full economic impact of such projects on communities. Additionally, the bill's required reporting of project data would help relevant parties identify areas in which a project was not meeting job creation or project investment requirements and ensure that the project was subject to the appropriate penalties. If an agreement was terminated, the project would be required to repay the district any tax savings the project received as part of the agreement in addition to the assessed penalties, providing a stronger incentive for projects to comply.

Critics said

HB 5 would subsidize wealthy corporations that least need tax breaks or state subsidies rather than investing state dollars in more urgent areas of need, such as improving schools and raising teacher salaries. Additionally, as many school districts lack the property necessary to attract an incentive project, passing legislation that would divert property tax resources for corporate gain would compound existing disparities and undermine equitable funding principles.

Tax abatement. By exempting corporations from their local school district tax obligations, which are often used to pay for schools, roads, and other community services, the bill would shift the tax burden onto homeowners and small businesses who were least able to afford these costs. HB 5 would provide millions of dollars in tax breaks to wealthy companies, many of which could already build facilities in Texas without an incentive due to the state's favorable business climate and reasonable regulations. Furthermore, school boards, which may have limited expertise in economic development, would be responsible for deciding which companies received the tax incentives, essentially making economic decisions for the state and potentially spending tax dollars on projects for which no incentive was needed.

Grid reliability. Though improving grid reliability is a stated goal of HB 5, the bill's incentive program would exclude projects related to clean renewable energy while incentivizing nonrenewable energy projects that could release pollutants into the environment. Additionally, Texas companies looking to expand existing facilities would be eligible for the tax incentives, which would unnecessarily benefit oil and gas companies that required no such incentives to begin new projects.

Since grid reliability projects also would be exempt from the job creation requirements, these projects would not be required to contribute to one of the bill's primary goals of promoting job creation in local communities. To meet the needs of a rapidly growing population and increasing demands for electricity, Texas should incentivize all forms of energy, hold all energy projects to the same standards as other projects, and support projects that created jobs and improved energy reliability, regardless of the source.

Accountability. HB 5 would not provide adequate opportunity for community input or accountability mechanisms to ensure that wealthy corporations fulfilled their obligations under the bill. Further, the bill would lack criteria to ensure that projects did not release harmful substances into our air and water. To receive a tax incentive, applicants should be required to demonstrate a positive record on environmental impact and projects that could negatively impact the health of humans or wildlife should be ineligible for tax incentives.

Notes

The HRO bill digest of HB 5 appeared in Part One of the May 4 *Daily Floor Report*.

Allowing third party property development document reviews and inspections

HB 14 by Cody Harris
Effective September 1, 2023

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HB 14 authorizes certain individuals to review a property development document if a regulatory authority does not approve, disapprove, or conditionally approve the document within 15 days after the date prescribed by an applicable statute.

Development documents are defined as documents required to be approved for a person to develop or improve land, including applications for plats, plans, and development permits. The bill defines a regulatory authority as the governing body responsible for processing or approving a development document or conducting a development inspection.

Under the bill, individuals who may review the development document after the 15 day deadline include a person employed by the regulatory authority, a person employed by another political subdivision and approved by the regulatory authority, or a licensed engineer. The applicant or the person whose work is the subject of the application is prohibited from performing the review.

If a regulatory authority does not conduct a required inspection within 15 days after the date prescribed by an applicable statute, the inspection may be conducted by:

- a person certified to inspect buildings by the International Code Council;
- a person employed by the regulatory authority as a building inspector;
- a person employed by another political subdivision as a building inspector, if the regulatory authority has approved the person to perform inspections; or
- a licensed engineer.

The owner of the land or improvement subject to the inspection or a person whose work is subject to inspection are prohibited from conducting the inspection.

A third party who reviews a development document or conducts a development inspection must:

- review the document, conduct the inspection, and take all other related actions in accordance with all applicable statutes; and
- provide notice to the regulatory authority of the results of the review or inspection within 15 days of completion.

The bill prohibits regulatory authorities from imposing a fee related to third-party inspections or reviews of a development document. The regulatory authority may not request or require an applicant to waive a deadline or other procedure. The bill also establishes a 15-day deadline for a person to appeal a decision on a development document or a development inspection. If the governing body hearing the appeal does not affirm the decision being appealed within 60 days, the development document is considered approved or the development inspection is waived.

Supporters said

HB 14 would streamline approval processes for property development and building reviews by allowing qualified third parties to review development documents and conduct inspections, ensuring timely responses to reviews and inspections. Delays in developments can dampen economic development and increase costs for developers, which can make housing more costly and increase the amount of time homeowners must wait before moving in. Many cities already use third parties for these actions, and these third parties would be required to follow all aspects of the law. The bill would help cities efficiently address backlogs at local planning and building

departments who are struggling to hire enough staff to handle the demand, reducing barriers to development and increasing the availability of affordable housing.

Critics said

HB 14 would be unnecessary because cities are already remedying the application backlog by using new technology, hiring more staff, and partnering with third parties. The bill would set an unrealistic timeline for cities that did not consider differences between development for single family homes and those for large commercial projects. The bill also would not set a timeline for third parties to complete reviews or inspections, and it would hold cities to a different standard than third parties.

The bill would not require cities to approve third-party engineers like they approve employees of another political subdivision, which could undermine a city's process for conducting inspections and reviewing development documents. The bill would not include sufficient accountability and auditing measures, which could further limit cities' oversight of third parties. Additionally, the bill would not clarify what would happen if a city and a third party reviewed documents at the same time and which review would prevail, which could cause confusion.

The bill should allow other qualified professionals, such as architects or those with planning degrees, to conduct reviews of development documents in addition to those authorized by the bill. HB 14 also should allow municipalities to collect fees for third party reviews or inspections to cover the cost of these services and should clarify whether the city would be held liable for mistakes made by third parties. The bill should remove the ability for individuals to appeal to a governing body to approve or disapprove a development decision to ensure that the approval process remained in the hands of experts and focused on applicable codes and regulations.

Notes

The HRO analysis of HB 14 appeared in the April 12 *Daily Floor Report*.

Regulating the provision of digital services to minors

HB 18 by Slawson
Generally effective September 1, 2024

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HB 18 requires digital service providers to obtain consent from a parent or guardian before a known minor may enter into certain agreements with a provider, gives digital service providers certain duties when providing services to minors, and allows parents or guardians to take certain actions regarding a minor's data.

The bill defines a digital service provider as a person who owns or operates a digital service, determines the purpose of collecting and processing personal identifying information, and determines the means used to collect and process such information. A digital service is defined as a website, application, program, or software that performs collections or processing functions with internet connectivity.

The bill applies to a digital service provider who provides a digital service that allows users to socially interact with other users, create a public or semi-public profile, and create or post content that can be viewed by other users of the digital service. The bill does not apply to certain public entities and financial institutions, small businesses, educational services, or higher education institutions, among other exceptions.

Agreements with known minors. A digital service provider may not enter into an agreement with a person to create an account with a digital service unless the person has registered the individual's age. Unless a verified parent provides otherwise, a digital service provider that enters into an agreement with a known minor for access to a digital service must limit the collection of the minor's personal identifying information to the information reasonably necessary to provide the digital service. Digital service providers also must limit the use of the known minor's personal identifying information to the purpose for which the information was collected.

The digital service provider may not:

- allow a known minor to make purchases or engage in other financial transactions through the digital service;
- share, disclose, or sell the known minor's personal identifying information;
- use the digital service to collect the known minor's precise geolocation data; or
- use the digital service to display targeted advertising to the known minor.

Verified parents. For each person seeking to perform an action on a digital service as a minor's parent or guardian, a digital service provider is required to verify the person's identity and relationship to the known minor.

A verified parent is entitled to supervise the minor's use of a digital service or alter the duties of a digital service provider with regard to the minor. A verified parent also may submit a request to a digital service provider to review and download any personal identifying information associated with the minor in the digital service providers' possession and delete any personal identifying information associated with the minor collected or processed by the provider. A provider must establish and make available a method by which a parent or guardian may make such a request.

If a minor is in the conservatorship of the Department of Family and Protective Services, the department may designate the minor's caregiver or a member of the department's staff to perform the functions of the minor's parent or guardian.

Parental tools. HB 18 requires a digital service provider to create and provide parental tools to supervise the minor's use and allow verified parents to:

- control the minor's privacy and account settings;
- alter the duties of a digital service provider under

an agreement with a known minor;
- restrict a minor's ability to make purchases or engage in financial transactions if the verified parent alters a related duty of a digital service provider; and
- monitor and limit the amount of time the minor spends using the digital service.

Duties on advertising and marketing. The bill requires a digital service provider to make a commercially reasonable effort to prevent advertisers on its service from targeting a known minor with advertisements that facilitate, promote, or offer a product, service, or activity that is unlawful for a minor to use or engage in.

Duty to prevent harm. Under the bill, a digital service provider must develop and implement a strategy to prevent a known minor's exposure to harmful material and other content that promotes, glorifies, or facilitates:

- suicide, self-harm, or eating disorders;
- substance abuse;
- stalking, bullying, or harassment; or
- grooming, trafficking, child pornography, or other sexual exploitation or abuse.

A digital service provider that knowingly publishes or distributes material of which more than one-third is harmful or obscene as defined under current law must use a commercially reasonable age verification method to verify that any person seeking access is 18 years old or older.

Use of algorithms. A digital service provider that uses algorithms to automate the suggestion, promotion, or ranking of information to known minors on its service is required to ensure that the algorithm does not interfere with its duty to prevent harm. A digital service provider also is required to clearly and accessibly disclose an overview of certain information on how the algorithm provides information in its terms of service, privacy policy, or similar document.

Enforcement. A violation of the bill is a deceptive act or practice under Texas' Deceptive Trade Practices law solely as an enforcement action by the attorney general's office. If a digital service provider violates the bill, the parent or guardian of a minor affected by that violation may bring a cause of action seeking a declaratory judgment or an injunction against the digital service provider.

Education standards. The Texas Education Agency (TEA) is required to adopt standards for permissible electronic devices and software applications used by school districts and charter schools as specified in the bill. Before transferring an electronic device to a student, a school district or charter school must adopt certain rules related to online safety, parent participation, use of transferred equipment, and use of internet filters. These provisions apply beginning with the 2023-2024 school year.

Study. The bill requires a joint committee of the Legislature, consisting of members of the House appointed by the speaker and members of the Senate appointed by the lieutenant governor, to conduct a study on the effects of media on minors.

Supporters said

HB 18, also known as the Securing Children Online through Parental Empowerment (SCOPE) Act, would improve online safety for minors by increasing data privacy for children and giving parents more control over their children's online data. While federal law currently provides certain online protections for children under 13, minors of all ages can be exposed to harmful content online, which may put them in dangerous situations that can affect their physical and mental health. Current safeguards are not enough to protect children and parents are not able to sufficiently monitor their children's online activities. Parents should be involved to ensure a child's safety whenever a website enters into an agreement with a minor.

The bill would protect children's data privacy by limiting online providers' ability to collect certain data from children. It also would empower parents to better protect their children and potentially mitigate harm by giving them rights to their child's data.

The bill would not require digital service providers to reveal any source code for their algorithms and would only require them to provide an overview of how the algorithm was used. Additionally, while some have raised concerns about an increase in the collection of sensitive information by digital service providers, the purpose of the bill would be to increase trust and reliability with those providers.

Critics said

HB 18 would not necessarily achieve the goal of improving online safety for minors. Many companies already take steps to improve online safety for children and prohibit dangerous and violent content. There are other factors that contribute to mental health issues besides social media use and damaging behaviors cannot necessarily always be attributed to social media use.

The bill also could have the unintended consequence of increasing data collection by requiring more people to verify their identities.

Requiring companies to provide an overview of how digital providers used algorithms to provide information to minors could disclose how the algorithms identify and remove harmful content, which could allow bad actors to post more harmful content in the future.

The bill's definition of "digital service provider" is too broad and could encompass retail and other general use websites. The bill should apply only to websites that pose a higher risk of harm to children.

Notes

The HRO analysis of HB 18 appeared in the April 25 *Daily Floor Report*.

Another bill related to the regulation of personal data, **HB 4** by Capriglione, effective July 1, 2024, establishes certain restrictions, consumer rights, and state oversight related to the sale and processing of consumer personal data. The HRO analysis of HB 4 appeared in the April 4 *Daily Floor Report* and appears in this *Major Issues* report.

Prohibiting discrimination based on hair texture or protective hairstyles

HB 567 by Bowers
Effective September 1, 2023

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HB 567 prohibits public school districts and public higher education institutions from adopting student dress or grooming policies that discriminate against hair textures or protective hairstyles commonly or historically associated with race, including policies for any extracurricular activities.

The bill also expands existing protections against racial discrimination in the Labor Code and Texas Fair Housing Act to include discrimination because of or on the basis of a hair texture or protective hairstyle commonly or historically associated with race. An employer, labor union, or employment agency commits an unlawful employment practice if it adopts or enforces a dress or grooming policy that discriminates against such a hairstyle or texture.

For all provisions, the bill specifies that protective hairstyles include braids, locks, and twists.

Supporters said

HB 567, also known as the CROWN Act, would protect civil rights by prohibiting workplace, educational, and housing discrimination based on hair texture and styles commonly or historically associated with race. Discriminatory hair policies have led to lost employment opportunities and school suspensions for many Black Texans. School dress or grooming policies that discriminate against natural hair also can be damaging to Black students' self-esteem, especially for girls. Discriminatory hair policies may endanger physical health, as some chemical hair straighteners can burn the scalp and have been linked to uterine cancer. Other ways of forcing natural hair to comply with policies regulating appearance such as binding, pinning, or pulling up hair are often impractical and painful. Certain hairstyles, including braids, locks, and twists, can be necessary to preserve natural Black hair. A person's success should not be inhibited by the way the person's hair grows, which has no bearing on academic or professional performance. Black Texans should be free to embrace their natural hair at home, school, or work.

The bill would not create a new protected class but instead would expand existing prohibitions on racial discrimination to include hair texture and style. Additionally, the bill would not interfere with federal regulations on safety and hygiene, nor would it pose a threat to the normal operation of businesses. Studies have shown inclusive work environments to generally be more productive places of work, so the bill would not harm businesses.

Critics said

While preventing discrimination is a worthy goal, the bill should specify that employers are permitted to uphold certain health and safety regulations, such as requiring employees to wear hair coverings when handling food.

Notes

The HRO analysis of HB 567 appeared in the April 12 *Daily Floor Report.*

Establishing the Lone Star Workforce of the Future Fund

HB 1755 by Button
Effective September 1, 2023

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HB 1755 requires the Texas Workforce Commission (TWC) to establish the Lone Star Workforce of the Future Fund as a dedicated account in the general revenue fund. TWC is also required to establish the Lone Star Workforce of the Future Fund grant program to provide grants to public junior colleges, public technical institutes, and nonprofits.

Grant eligibility. To be eligible to receive a grant, a public junior college, public technical institute, or nonprofit must administer one or more performance-based workforce training programs that:

- lead to skill development and experiences required for employment in high-demand occupations in at least one career field identified as a high-growth career field by TWC, the Texas Workforce Investment Council, or the Tri-Agency Workforce Initiative;
- developed and provided in consultation with employers in high-demand occupations;
- create pathways to employment for program participants; and
- delivered through classroom-based or online instruction, work-based experiences internships, apprenticeships, or a combination of those methods.

Eligible entities must demonstrate successful outcomes in workforce recruitment numbers, training standards, and employment results through third-party validated data. The bill also requires that these entities demonstrate the ability to attract at least 40 percent of the necessary funding for training programs from revenue streams other than state government funding and agree to:

- collaborate with TWC, corporate partners, and nonprofit educational partners to determine the training programs to be provided using grant money;
- secure support from local businesses to ensure alignment between training program offerings and in-demand skills;
- collaborate with certain other entities to make available developmental work-based experience;
- engage certain local entities to assist with identifying and recruiting eligible training program participants;
- provide documentation to TWC describing training program offerings, including information verifying that training is not exclusive to a single corporate partner and leads to skills transferable to similar employment opportunities in high-demand occupations; and
- comply with additional grant conditions prescribed by TWC rule, including performance benchmarks.

The amount of grant money awarded to an entity may not exceed $15,000 per training program participant and grant money may only be used for certain workforce training-related expenses.

Advisory board. The bill requires TWC to award grants based on the advice and recommendations of an advisory board of education and workforce stakeholders, which must be created to assist TWC in administering the fund. The advisory board must be composed of six appointed members serving two-year terms and is required to meet at least twice each calendar year, or as needed, to make recommendations on awarding grants.

Use of funds. TWC may only use the fund to award grants and to conduct due diligence assessment reviews of entities receiving grants with a consortium of corporate partners identified by TWC as having available entry-level workforce demand.

Performance benchmarks. TWC must establish performance benchmarks for entities receiving grants. Benchmarks must include a requirement that an entity facilitate the successful transition of at least 50 percent of

its training program participants from low-wage work or unemployment to full-time jobs offering a self-sufficient wage and opportunity for career mobility within six months of training completion.

TWC must require reimbursement on a pro-rata basis from a grant recipient that does not meet a performance benchmark, though the bill exempts recipients if a lack of compliance is due to certain reasons outside of their control.

Reporting requirements. TWC must require each grant recipient to submit progress reports at least twice a year with certain information on the funded training programs.

Supporters said

The Lone Star Workforce of the Future Fund created by HB 1755 would allow for greater state investment into the Texas workforce and help to close the existing skills gap, in which many high-demand skilled jobs lack enough qualified workers to fill positions. By funding workforce development programs, HB 1755 would help more Texans develop the skills they need to be employed in these high-demand industries. The bill would help to increase the earning potential for Texas workers, driving economic growth. Responding to industry demands and focusing training programs in high-demand areas also would increase the competitiveness of business in the state and strengthen Texas' economy. Additionally, the required performance benchmarks for grant recipients would help ensure that only programs that provided results received funding.

Critics said

Money put toward the fund would be better used for other legislative priorities, such as property tax relief. There have also been concerns raised over the current administration of workforce training programs by TWC, and giving this agency more responsibility when current issues have not been resolved may not be prudent.

Notes

The HRO analysis of HB 1755 appeared in the April 25 *Daily Floor Report*.

Other notable bills considered during the 88th Legislature related to workforce development programs included **HB 3723** by Gerdes, which would have established the Rural Workforce Training Program and died in the Senate Natural Resources & Economic Development Committee, and **HB 4390** by Button, which would have changed the definition of an industry-recognized apprenticeship program and died in conference committee.

The HRO digest of HB 3273 appeared in Part Three of the May 2 *Daily Floor Report.* The HRO digest of HB 4390 appeared in Part One of the April 28 *Daily Floor Report.*

Restricting certain sexually oriented performances

SB 12 by Hughes
Effective September 1, 2023

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SB 12 creates a class A misdemeanor offense (up to one year in jail and/or a maximum fine of $4,000) for a person engaging in a sexually oriented performance on public property at a time, in a place, and in a manner that may reasonably be expected to be viewed by a child or in the presence of an individual under 18. The conduct is an offense regardless of whether compensation for the performance is expected or received.

The bill defines sexually oriented performance as a visual performance that features a performer who is nude, as defined in statute, or engaged in sexual conduct and that appeals to the prurient interest in sex. Sexual conduct is defined as:

- the exhibition or representation, actual or simulated, of sexual acts;
- the exhibition or representation, actual or simulated, of male or female genitals in a lewd state;
- the exhibition of a device designed and marketed as useful primarily for the sexual stimulation of male or female genitals;
- actual contact or simulated contact occurring between one person and the buttocks, breasts, or any part of the genitals of another person; or
- the exhibition of sexual gesticulations using accessories or prosthetics that exaggerate male or female sexual characteristics.

A person who controls the premises of a commercial enterprise is prohibited from allowing a sexually oriented performance to be presented on the premises in the presence of an individual under 18. A person who violates this prohibition is liable for a civil penalty of up to $10,000 for each violation.

The bill authorizes a municipality or county to regulate sexually oriented performances as necessary to promote public health, safety, or welfare and prohibits a municipality or county from authorizing a sexually oriented performance on public property or in the presence of an individual under 18.

Supporters said

SB 12 would protect children from exposure to sexually explicit performances by prohibiting these performances in public areas or in spaces where it can be assumed children under the age of 18 will be present. There has been an increasing trend in children attending inappropriate performances, such as those involving drag or sexually explicit dancing. While these types of performances have typically been reserved for sexually oriented businesses, they are now occurring in venues, such as restaurants, where children may be present. Research has shown that exposure to sexually inappropriate content at a young age can negatively impact a child's development. Though there are laws governing sexual acts in public, they do not explicitly protect children.

The bill would not ban drag or explicit performances for adults, and such performances could continue as long as children were not present. Additionally, the bill would only restrict performances that appealed to a prurient interest in sex. Sexually oriented performances are not necessarily protected under the First Amendment, as certain types of expression, such as obscenity, are not constitutionally protected.

Critics said

The definition of "sexually oriented performance" in SB 12 would be too vague and could be harmful to businesses and performers. The bill also would not define "prurient interest," which could make it hard to determine what kinds of performances would be against the law. Cheerleading, concerts, theatrical performances, and others could be placed under confusing and unclear regulations, hurting businesses and discouraging artists from performing in Texas. The bill's definition of nudity also could allow performers to be prosecuted for even an accidental wardrobe malfunction. The bill should not apply strict liability standards to potential offenders

without taking into account intent, knowledge, or recklessness.

Additionally, SB 12 would be unnecessary because there are already strict regulations in place regarding sexually oriented businesses, public lewdness, and indecent exposure.

Restricting drag performances could violate Texans' First Amendment rights by restraining free expression, and could create an avenue for prosecutors to arbitrarily or discriminatorily censor constitutionally-protected activities. Drag performances are a form of artistic expression and many are not sexually explicit or inappropriate for children. Parents should be trusted to decide whether their children may attend such performances.

Notes

The HRO digest of SB 12 appeared in the May 19 *Daily Floor Report*.

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Creating a specialty business court

HB 19 by Murr
Effective September 1, 2023

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HB 19 creates a business court as a statutory court created under Texas Constitution Art. 5, sec. 1, which allows the Legislature to establish other courts as it deems necessary and to prescribe the jurisdiction and organization of such courts. The business court is created September 1, 2024.

Under the bill, the business court has the powers provided to district courts and has certain functions of a district court, including:

- the drawing of jury panels, selection of jurors, and other jury-related practices and procedures, which is the same as for the district court in the county in which the trial is held; and
- practice, procedure, rules of evidence, issuance of process and writs, and all other matters pertaining to the conduct of trials, hearings, and other business.

A business court judge has the powers, duties, immunities, and privileges of a district judge and may be removed from office in the same manner and for the same reasons as a district judge. Additionally, a business court judge is disqualified and subject to mandatory recusal for the same reasons a district judge is subject to disqualification or recusal in a pending case. Disqualification or recusal of a business court judge is governed by the same procedure as for a district judge.

Judicial districts. The judicial district of the business court is composed of all counties in Texas and divisions corresponding with the eleven administrative judicial regions. The Second, Fifth, Sixth, Seventh, Ninth, and Tenth business court divisions are abolished on September 1, 2026, unless reauthorized and funded by the Legislature. The governor must appoint judges to these divisions on or before September 1, 2026, but not before July 1, 2026.

Jurisdiction. The business court has civil jurisdiction concurrent with district courts for the following actions in which a party is a publicly traded company or the amount in controversy exceeds $5 million:

- a derivative proceeding;
- an action regarding the governance, governing documents, or internal affairs of an organization;
- an action in which a claim under a state or federal securities or trade regulation law is asserted against certain entities;
- certain actions by an organization or an owner of an organization;
- an action alleging that a party breached a duty owed by reason of the person's status as an owner, controlling person, or managerial official;
- certain actions seeking to hold an owner or governing person of an organization liable for an obligation of the organization; and
- an action arising out of the Business Organizations Code.

The business court has civil jurisdiction concurrent with district courts for the following actions in which the amount in controversy exceeds $10 million:

- an action arising out of a qualified transaction;
- an action arising out of a contract or commercial transaction in which the parties to the contract or transaction agree that the business court has jurisdiction of the action, except an action that arises out of an insurance contract; and
- an action arising out of a violation of the Finance Code or Business & Commerce Code by an organization or an officer or governing person acting on behalf of an organization other than a bank, credit union, or savings and loan association.

The business court also has civil jurisdiction concurrent with district courts in an action seeking injunctive relief or a declaratory judgment that involves a dispute based on a claim within the court's jurisdiction.

The business court has supplemental jurisdiction over any other claim related to a case or controversy in the court's jurisdiction that forms part of the same case or controversy. A claim within the business court's supplemental jurisdiction may proceed in the business court only on the agreement of all parties to the claim

and the judge of the division before which the action is pending. If the parties involved in a claim within the business court's supplemental jurisdiction do not agree on the claim proceeding in the business court, the claim may proceed in a court of original jurisdiction concurrently with any related claims proceeding in the business court.

Unless a claim falls within the business court's supplemental jurisdiction, the business court does not have jurisdiction of:

- a civil action brought by or against a governmental entity;
- a civil action to foreclose on a lien on real or personal property;
- a claim arising from provisions on covenants not to compete and deceptive trade practices in the Business and Commerce Code;
- a claim arising from provisions governing trusts and mechanic's liens, contractor's liens, and materialman's liens in the Property Code;
- a claim arising under the Insurance Code, the Estates Code, or the Family Code;
- a claim arising out of the production or sale of a farm product;
- a claim related to a consumer transaction to which a consumer in Texas is a party, arising out of a violation of federal or state law; or
- a claim related to the duties and obligations under an insurance policy.

The business court does not have jurisdiction of claims related to medical liability, recovery or monetary damages for bodily injury or death, or legal malpractice.

The party filing an action in the business court is required to plead facts in order to establish venue in a county belonging to a division of the business court. Venue may be established as provided by law or by a written contract that specifies a county as venue for the action. The bill provides procedures for when the business court does not have jurisdiction of an action or the court determines that the division does not include a county of proper venue for the action.

Appeals. HB 19 grants the Fifteenth Court of Appeals exclusive jurisdiction over an appeal from an order or judgment of the business court or an original proceeding related to an action or order of the business court. If the Fifteenth Court of Appeals is not created, the bill requires that an appeal from an order or judgment of the business court or an original proceeding related to an action or order of the business court be filed in the applicable intermediate court of appeals with jurisdiction.

Juries. A party to an action pending in the business court has the right to a trial by jury when required by the state Constitution. The bill establishes requirements for jury trials in certain cases.

Business court judges. The bill requires that qualified judges be appointed by the governor with the advice and consent of the Senate. A business court judge serves for a term of two years and must be a licensed attorney in Texas with 10 or more years of experience in practicing complex civil business litigation, practicing business transaction law, serving as a judge of a court in this state with civil jurisdiction, or any combination of such experience, among other qualifications.

The bill also establishes provisions for the reappointment of business court judges and for visiting judges. A qualified retired or former judge or justice may be assigned as a visiting judge of a division of the business court by the chief justice of the Supreme Court.

Administration. The business court judges are required to select a judge of the court to serve as administrative presiding judge to manage administrative and personnel matters on behalf of the court.

Each business court judge is required to maintain chambers in a state-provided facility in the county the judge selects within the geographic boundary of the division to which the judge is appointed. Judges may hold court in any courtroom within this geographic boundary that is determined necessary or convenient. The bill also establishes provisions on remote proceedings, personnel, court fees, and rules of practice and procedure.

Constitutionality. The Texas Supreme Court has exclusive and original jurisdiction over a challenge to the constitutionality of the bill and may issue injunctive or declaratory relief in connection with a challenge. If the appointment of business court judges by the governor is held by the Supreme Court as unconstitutional, the business court must be staffed by retired or former judges or justices appointed as provided by the bill.

Supporters said

HB 19 would establish new specialized courts with jurisdiction over business law cases. Texas already has numerous other specialized courts dealing with probate, juvenile, family, and veteran issues, but currently lacks a court to deal specifically with complex business issues.

Many other states have some form of business or complex litigation court to ensure business suits are reviewed by those with the relevant expertise. The bill's qualifications for judges would ensure that business cases were heard by those with expertise in business law and litigation. Developing a business court system in Texas would help to strengthen the state's legal system and improve consistency and efficiency in addressing business disputes.

The Legislature has created other specialty courts as authorized by the state Constitution. The business court would be statutory, composed of divisions that aligned with the geography and numbering of the state's administrative courts, presided over by appointed judges with business expertise that would hold offices in each division, and authorized to issue written opinions to help establish precedence for future cases. The court also would create a specialized docket, allow cases to be reviewed by judges who were consistently exposed to disputes of a similar nature, and assign a single judge to handle the entirety of a dispute.

The Texas Constitution allows the Legislature to establish other courts as it deems necessary and to prescribe their jurisdiction and organization. Although the Constitution requires district court judges to be elected, the business court would not be a district court, so its judges could be appointed. The two-year term established by the bill also would help to ensure accountability. Appointment would be the best way to ensure business court judges had the relevant expertise and experience, as voters may not necessarily elect judicial candidates with the enhanced qualifications needed for the business court system, and changing the qualifications for certain judicial positions requires a constitutional amendment.

A specialty business court also could help address backlogs in district court dockets across the state. Current law requires that certain other cases receive priority over business litigation, which can lead many business conflicts to remain unheard in the Texas court system for years. A business court would help to remove complex or lengthy business cases from existing court dockets, facilitating quicker resolutions for all cases.

Complex business disputes concerning specific matters such as mergers and acquisitions, corporate governance, and securities issues are often unevenly distributed throughout the judicial system, leaving certain courts with more experience in these areas than others, which can lead to inconsistent decisions and approaches. When complex business cases are heard before a Texas court, they often require intense research by both the judge and jury as well as a lengthy judicial consideration of discovery and dismissal motions, which can be time and resource-intensive.

Some Texas businesses have chosen to have their suits heard in business court venues outside of the state to ensure that the case is addressed within a court system that is familiar with and experienced in business disputes and contract law. Establishing similar courts in Texas could produce more consistent and timely rulings and improve confidence in the state judicial system among Texas businesses.

Critics said

The business court established by HB 19 would be unnecessary, as judges across the state currently adjudicate business disputes fairly, efficiently, and in accordance with the law. Trial courts serve their communities well and dispense justice across a wide range of cases, meeting the needs of varied litigants independently.

Additionally, provisions related to jurisdiction, powers, and appointment of judges should be more closely examined to avoid constitutional challenges. Though the state Constitution allows the Legislature to prescribe the jurisdiction and organization of courts, these powers do not explicitly include the selection of judges. Passing a constitutional amendment to authorize the court, define its structure and jurisdiction, and specify how presiding judges were identified would be a better way to create a new court of this nature.

The appointment of judges by the governor could leave the business courts susceptible to political pressures. Two-year terms also could pose issues, such as the disruption of cases and conflicts of interest if appointed judges moved on and off the bench before a case was resolved. It also could create the appearance of impropriety if a judge is replaced mid-case, which could undermine public trust in the business courts. All judges should be elected to ensure that the court was held accountable to the community it served. Providing more information to the electorate and setting minimum requirements for candidates would be a better approach to ensuring qualified judges were chosen.

The implementation of the business court would create separate systems for certain business disputes that could undermine the principle of equal justice under the law. Under the proposed new court system, large companies could have cases heard by the court more frequently, creating a familiarity with the court and its

procedures. Opposing parties that rarely litigated within the business court could be at a disadvantage against those who appeared routinely. The new business court system could make adjudicating these cases more complex if parties disputed which court should have jurisdiction due to the party's own preference.

Before creating a new court system, lawmakers should first implement and monitor a pilot business court program under the Texas Supreme Court as recommended by the Texas Judicial Council Civil Justice Committee. Additional review would help ensure that a statewide court focused on one issue was appropriately structured and was not an improper allocation of judicial power.

Notes

The HRO analysis of HB 19 originally appeared in the May 1 *Daily Floor Report*.

Another bill establishing a new court, **SB 1045** by Huffman, appears in this *Major Issues* report.

Amending requirements for judicial office candidates and office holders

HB 2384 by Leach
Effective September 1, 2023

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HB 2384 establishes additional ballot application requirements for candidates for certain judicial offices, additional education requirements for sitting judges, and provisions on reporting certain court performance measures.

The provisions of the bill apply to candidates for judicial office within the state's Supreme Court, Court of Criminal Appeals, courts of appeals, district courts, and statutory county courts.

Ballot application form. HB 2384 requires a judicial candidate's application for a place on the ballot to include a candidate's bar number for Texas and any other state in which the candidate has been licensed to practice law. Furthermore, candidates are required to include statements describing the nature of the candidate's legal practice as well as the candidate's professional courtroom experience in the preceding five years.

Candidates also are required to disclose within the application any:

- public sanctions or censure issued by the State Commission on Judicial Conduct (the commission) or a review tribunal;
- public disciplinary sanctions imposed by the state bar or an entity responsible for attorney discipline in another state; and
- final convictions of Class A or Class B misdemeanors within 10 years preceding the date the person would assume judicial office.

Judicial candidates for the Supreme Court, Court of Criminal Appeals, or a court of appeals who do not hold or have not previously held judicial office must include in the application a description of any appellate court briefs prepared and oral arguments presented before an appellate court in the preceding five years.

The ballot application form is required to include a statement informing candidates that knowingly providing false information constitutes professional misconduct subject to public sanctions or censure by either the commission or the state bar, as applicable. If the panel of a district grievance committee finds that an attorney knowingly made a false declaration on an application for candidacy, the panel must impose a public sanction against the respondent attorney. Any sanctions the commission issued against a judge for knowingly making a false declaration, withdrawals of such sanctions, and all records and proceedings related to such sanctions are a matter of public record.

Judicial education requirements. The bill requires the Texas Supreme Court, in consultation with the Court of Criminal Appeals, to adopt rules on judicial training. These rules must require a judge to complete at least 30 hours of instruction within the first year of assuming office and 16 hours in each following year, with certain exceptions.

The commission also must issue an order suspending judges who fail to meet these education requirements until the judge demonstrates compliance. For the purposes of constitutional provisions establishing the conduct by which a judge may be considered for removal, judges who remain noncompliant for more than one year are considered to have engaged in conduct inconsistent with proper performance of a judge's duties and are subject to removal from office. If presented with evidence by the commission establishing probable grounds that a judge has been noncompliant for more than one year, the attorney general is required to file a petition challenging the judge's right to hold office.

Assistance and performance standards. Under the bill, the administrative director of the Office of Court Administration (OCA) must develop standards for identifying courts that need additional assistance to promote the efficient administration of justice.

Additionally, the presiding judges of judicial administrative regions may appoint a judicial mentor or arrange for more administrative personnel to be assigned to courts that have been identified by OCA as requiring additional assistance.

The bill also requires OCA to include disaggregated performance measures in its performance report regarding the efficiency of each appellate, district, statutory county, statutory probate, and county court. OCA must report certain performance measures for each of these courts, other than an appellate court, including its clearance rate, the average time a case is before the court, and the age of the court's active pending caseload.

Specialty certifications for attorneys. The Supreme Court is required to adopt rules establishing a specialty certification for attorneys in the practice area of judicial administration.

The Texas Board of Legal Specialization must make recommendations to the Supreme Court regarding this specialty certification and a proposed examination to obtain the certification. The board must make specialty certifications available to judges of appellate courts, district courts, statutory county courts, statutory probate courts, and county courts who meet certain criteria.

Under the bill, the Supreme Court must require an attorney holding specialty certification to annually complete 21 hours of continuing legal education to maintain the certification.

Supporters said

The bill would improve transparency measures within the state's judicial system, allowing voters to make more informed choices at the ballot box and increasing public trust in the judiciary by ensuring that a judge or justice's critical personal and professional information were disclosed to the public. It also would allow voters to better evaluate judicial competency by ensuring that voters were informed of candidates' courtroom experience and legal specializations. Furthermore, requiring specific performance metrics to be collected would help the public understand how judges were performing within their elected positions.

HB 2384 would help to improve the skills and competency of sitting judges through robust judicial education and training requirements. This training would focus on improving a judge's administrative abilities, an area where many first-time elected judges lack prior experience, which in turn could help judges throughout the state to maintain a more efficient case docket. Training could help increase public confidence in the judiciary, improve judges' confidence in their own rulings, and raise the state to a higher level of judicial excellence.

While the Court of Criminal Appeals is currently responsible for developing a judicial education program, the Texas Constitution requires disciplinary action against judges to be premised on violations of Supreme Court rules. Given that HB 2384 involves disciplinary actions for failure to comply with judicial education requirements, the responsibility of developing the training program and its rules should be given to the Supreme Court in order to avoid a constitutional conflict.

Critics said

While HB 2384 proposes valuable transparency measures and judicial education, the responsibility for developing the judicial education program should be assigned to the Court of Criminal Appeals instead of the Supreme Court. Current statute already assigns the responsibility and funding for judicial training to the Court of Criminal Appeals, and the bill could create unnecessary contradictions within the code. Allowing the Court of Criminal Appeals to maintain its role could enable judges to benefit from the court's existing training programs, resources, and expertise.

Notes

The HRO analysis of HB 2384 appeared in the April 17 *Daily Floor Report*.

Limiting length of trial stay for certain interlocutory appeals

SB 896 by Hughes
Died in the House

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SB 896 would have amended the length of time in which an interlocutory appeal stayed trial proceedings to protect a party's exercise of the right of free speech, right to petition, or right of association.

If a motion to dismiss a case in the trial court was denied because the motion was not timely filed, the action was exempt from dismissal under statute, or the motion was determined to be frivolous or solely intended to cause delay, the commencement of a trial and other trial proceedings would have been stayed for 61 days after the motion was denied. The bill would have authorized the relevant court of appeals to stay commencement of the trial and other trial proceedings upon a determination that the appellant was likely to succeed on the merits of the case or in the interest of justice.

If a motion to dismiss the case in the trial court was denied for a reason not otherwise provided for in the bill or for no specified reason, the commencement of a trial and other proceedings in the trial court would have been stayed pending resolution of the appeal.

Supporters said

By limiting the length of a stay for court proceedings for an interlocutory appeal, SB 896 would address concerns that parties are using the Texas Citizen Participation Act (TCPA) to purposefully delay litigation to deplete the financial resources of opposing parties in court. The TCPA was established to prevent the filing of strategic lawsuits against public participation (SLAPP), intended to suppress free speech, criticism, and public debate. Currently, any party in a lawsuit can invoke the TCPA (an anti-SLAPP law) to pause trial proceedings, protecting individuals from costly discovery and pre-trial processes, until a higher court can examine whether or not the lawsuit filed infringed on a defendant's First Amendment rights. However, certain parties have exploited the TCPA by invoking it in cases unrelated to First Amendment rights solely for the purpose of prolonging litigation. These delays can be expensive, as it may take months or even years for a higher court to reverse the stay in proceedings.

SB 896 would address this issue by limiting the stay of trial proceedings to 61 days if a court determined that the TCPA was raised frivolously, was solely intended to delay the trial, was filed in an untimely manner, or fell under certain exempt categories. This would provide a shorter and more discrete timeline in which the appeal was required to be resolved, preventing bad actors from using the TCPA to excessively delay litigation and ensuring the TCPA could better function as intended. If a court of appeals found that the appeal was warranted, the court could permanently stay the trial proceedings. SB 896 also would help to uphold the right to a jury trial and the right to an open court, which could be undermined through frivolous use of SLAPP.

Critics said

By limiting the time in which a trial was stayed for certain interlocutory appeals, SB 896 would weaken the First Amendment protections provided by the TCPA to guard against SLAPP. Currently, when defendants invoke the TCPA, ongoing litigation is suspended until a higher court reviews the case. Under the bill, however, a judge's determination that the motion to dismiss was frivolous, untimely filed, or made regarding an exempt legal action would limit the trial stay to 61 days, potentially restarting the original trial while the appeals process continued. This would require defendants to simultaneously plead their case in two separate courts, subjecting them to substantial legal expenses, and the punitive loss of resources could have a chilling effect on the free speech of small businesses, newspapers, and other media outlets unable to afford endless litigation, especially small, local papers.

By allowing the trial to resume before the appeals process was completed, the bill would not account for errors made by trial court judges when ruling on whether

a motion to dismiss qualified for a limited stay. Trial court judges rarely consider cases involving constitutional issues, which can lead to mistakes.

Limiting the stay could also further burden the already underfunded and undermanned Texas Court System, wasting the time and resources of trial courts whose actions on a case could be dismissed by the Court of Appeals at any time. Rather than protecting organizations against unwarranted anti-SLAPP claims, SB 896 would further encourage the frivolous filing of lawsuits by wealthy corporations or other litigants who were financially capable of outlasting their opponent in court.

Notes

The HRO digest of SB 896 appeared in Part Five of the May 23 *Daily Floor Report*.

Another bill that would have revised certain provisions on interlocutory appeals, **HB 3129** by Guerra, was amended by the Senate Jurisprudence Committee to include provisions of SB 896. HB 3129 died in the Senate and did not receive and HRO analysis.

Creating the Fifteenth Court of Appeals

SB 1045 by Huffman
Effective September 1, 2023

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SB 1045 creates the Fifteenth Court of Appeals District, composed of all counties in the state. The court is held in the City of Austin and may transact its business in any county in the district that the court deems necessary and convenient. The court consists of a chief justice and four justices holding places numbered consecutively, beginning with Place 2. For the first three years following the court's creation, the court consists of a chief justice and two justices holding places consecutively beginning with Place 2.

The court has exclusive intermediate appellate jurisdiction over the following matters related to civil cases:

- matters brought by or against the state or a state agency, including higher education institutions and university systems, with certain exceptions;
- matters brought by or against an officer or employee of the state or a state agency arising out of that employee's or officer's official conduct, with certain exceptions;
- matters in which a party to the proceeding files a petition, motion, or other pleading challenging the constitutionality or validity of a state statute or rule and the attorney general is a party to the case; and
- any other matter as provided by law.

The state Supreme Court may not transfer any case or proceeding properly filed with the Fifteenth Court of Appeals to another court of appeals for the purpose of equalizing dockets. The Supreme Court is required to adopt rules on:

- the transfer of an appeal inappropriately filed with the Fifteenth Court of Appeals; and
- the transfer to the Fifteenth Court of Appeals of appeals filed in other courts that are the exclusive intermediate appellate jurisdiction of the Fifteenth Court of Appeals.

SB 1045 establishes that the Fifteenth Court of Appeals' original jurisdiction to issue writs is limited to those arising out of matters over which the court has exclusive intermediate appellate jurisdiction.

Under the bill, a justice of the Fifteenth Court of Appeals other than the chief justice is entitled to an annual base salary from the state of $5,000 less than 120 percent of the state base salary of a district judge as set by the General Appropriations Act.

The Fifteenth Court of Appeals is not created unless the Legislature makes a specific appropriation for that purpose. If such an appropriation is made, the court is created on September 1, 2024. Initial vacancies for the chief justice and justices of the court are required to be filled by appointment.

Cases pending in other courts of appeals that were filed on or after September 1, 2023, that are the exclusive intermediate appellate jurisdiction of the Fifteenth Court of Appeals will be transferred to the new court on September 1, 2024. For cases transferred:

- all processes, writs, bonds, recognizances, or other obligations issued from the other courts of appeals are returnable to the Fifteenth Court of Appeals as if originally issued by the court; and
- the obligees on all bonds and recognizances taken in and for the other courts of appeals and all witnesses summoned to the other courts are summoned to the Fifteenth Court of Appeals as if originally required to appear before the court.

The Supreme Court has exclusive and original jurisdiction over a challenge to the constitutionality of SB 1045 or any part of the bill and may issue injunctive or declaratory relief in connection with a challenge.

By December 1 of each year, the Office of Court Administration is required to submit a report to the Legislature on the number and types of cases heard by the Fifteenth Court of Appeals in the preceding state fiscal year.

Supporters said

SB 1045 would improve judicial outcomes by creating the Fifteenth Court of Appeals, which would have a statewide district and hear cases involving the state of Texas and constitutionality challenges. Due to statutory venue requirements, most cases involving the state are currently filed in Travis County and appealed to the Third Court of Appeals in Austin. Since most of the population in the Third Court of Appeals' district lives in Travis County, its judges are essentially selected by voters in a single county. Cases involving the state are of statewide interest, so the judges hearing these cases should be elected by voters statewide.

Additionally, cases involving the state are often complex, nuanced, and time-consuming, and the Third Court of Appeals consistently has to transfer cases to other courts of appeals due to its high caseload. This means that some administrative law cases are transferred to courts with less relevant experience and heard by judges with varying levels of expertise, which can lead to incorrect and inconsistent results for litigants. Creating a statewide intermediate appeals court for such cases would allow its justices to build expertise in this area, improving consistency and efficiency.

Allowing all existing intermediate appellate courts to hear cases involving the state could lead to forum shopping. Creating the Fifteenth Court of Appeals would more effectively capture a statewide perspective by electing judges statewide. In addition, the state Supreme Court does not have the capacity to review all incorrect or inconsistent decisions that could result from allowing other appellate courts to hear cases involving the state.

While some have suggested that the bill could be found unconstitutional, SB 1045 would not pose a constitutional challenge because the state Constitution does not require court of appeals districts to be divided equally or prohibit overlapping districts.

Critics said

SB 1045 would be unnecessary because the current intermediate appellate court system has the capacity to handle cases involving the state. Inconsistencies between appellate courts are sufficiently resolved by the state Supreme Court and there is not enough data to demonstrate the necessity of the Fifteenth Court of Appeals. The current court system already encourages consistency between courts because the court hearing a case involving the state that is transferred out of the Third Court of Appeals relies on the Third Court of Appeals' existing precedent.

Creating a statewide court of appeals would delocalize certain court cases and could reduce the diversity of viewpoints among justices. The current system provides for mid-level courts of appeals that ensure accountability to local voters and support deference to local precedent. Statewide elections typically favor candidates from urban areas who have more resources and connections, so candidates from rural areas would be less likely to be elected to the Fifteenth Court of Appeals. If lawmakers want to ensure representation from voters across the state for these cases, they should consider other solutions, such as expanding the jurisdiction of existing intermediate appellate courts to hear cases involving the state or creating single-member districts for justices of the Fifteenth Court of Appeals. In addition, locating the Fifteenth Court of Appeals in Austin would not address the burdensome process litigants must undergo of travelling long distances for hearings.

The jurisdiction of the Fifteenth Court of Appeals established under the bill to include "any other matter prescribed by law" would be too broad. As a result, the Fifteenth Court of Appeals would be allowed to hear cases involving two private litigants from the business court established under HB 19 rather than only cases involving the state. Additionally, the many exceptions to the Fifteenth Court of Appeals' jurisdiction could encourage additional litigation and costs to determine in which court a case should be heard.

SB 1045 could be unconstitutional because the state Constitution does not provide for an intermediate appellate court with statewide jurisdiction.

Notes

HB 1 by Bonnen, the General Appropriations Act, appropriates about $4.7 million in fiscal 2024-25 to implement SB 1045.

The HRO digest of SB 1045 appeared in Part One of the May 15 *Daily Floor Report*.

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Designating fentanyl deaths as murders and enhancing penalties

HB 6 by Goldman
Effective September 1, 2023

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HB 6 designates fentanyl deaths as murders, enhances penalties for certain fentanyl-related drug offenses, and requires the medical certification on a death certificate to include language referencing fentanyl under certain circumstances.

The bill increases the penalty for knowingly manufacturing, delivering, or possessing with the intent to deliver a controlled substance listed in Penalty Group 1-B from a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) to a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) for amounts less than one gram. HB 6 also removes fentanyl and its analogues from Penalty Group 1 and adds them to Penalty Group 1-B.

The bill requires the medical certification on a death certificate to include either the term "fentanyl poisoning" or "fentanyl toxicity" if:

- a toxicology examination reveals a lethal amount or concentration of a controlled substance in Penalty Group 1-B in the decedent's body; and
- if an autopsy is performed, the results of the autopsy are consistent with an opioid overdose as the cause of death.

HB 6 also expands the conduct that constitutes murder such that a person commits an offense if the person knowingly manufactures or delivers a Penalty Group 1-B controlled substance and an individual dies as a result of injecting, ingesting, inhaling, or introducing any amount of the substance into the individual's body, regardless of whether the controlled substance was used by itself or with another substance. It is a defense to prosecution under the bill that manufacturing or delivering the controlled substance was authorized by state or federal law.

Punishment for manufacturing or delivering a controlled substance that causes a person's death or serious bodily injury as a result of injecting, ingesting, inhaling, or introducing the substance into a person's body cannot be increased if the defendant also is prosecuted for murder for conduct occurring during the same criminal episode.

HB 6 expands the conduct that constitutes the offense of engaging in organized criminal activity to include unlawful possession with intent to deliver a Penalty Group 1-B controlled substance with the intent to establish, maintain, or participate in certain criminal groups. The bill also establishes that the following offenses constitute a first-degree felony, with various fines and sentences specified in the bill:

- knowingly manufacturing, delivering, or possessing with the intent to deliver certain amounts of a controlled substance included in Penalty Group 1, 1-A, 1-B, 2, 2-A, 3, or 4;
- knowingly or intentionally possessing certain amounts of a controlled substance included in Penalty Group 1, 1-A, 1-B, 2, 2-A, 3, or 4, unless the person obtains the substance under a valid prescription or practitioner order;
- knowingly or intentionally delivering or possessing more than 2,000 pounds of marijuana; and
- bartering property or expending funds the person knows were derived from the commission of a first-degree felony.

Supporters said

HB 6 would help to address the fentanyl crisis and discourage the drug's manufacture and distribution by enhancing penalties for certain controlled substance offenses. Fentanyl deaths have increased rapidly across the state in recent years. Classifying such deaths as murders and addressing fentanyl-related organized criminal activity could discourage the distribution of fentanyl, which could in turn reduce overdoses and fatalities caused by the drug. Increasing the penalty for manufacturing or delivering

fentanyl quantities of less than one gram is necessary because even a small amount of the drug is deadly.

By requiring fentanyl poisoning or fentanyl toxicity to be listed on a death certificate rather than describing some of these deaths as accidents, the bill could improve the investigation and prosecution of fentanyl-related deaths. Additionally, the bill would encourage more efficient prosecution by clarifying that certain drug offenses would be first-degree felonies, which was previously unspecified in statute.

Critics said

While the fentanyl crisis is important to address, HB 6 would not effectively resolve the underlying problems that cause drug use and distribution. Enhancing penalties for drug offenses historically has not deterred distribution. Instead, the bill's approach could unnecessarily increase incarcerated populations, which disproportionately affects Black and Latino communities. The bill also could discourage people from calling emergency services when they witness an overdose due to fear of prosecution. Public health approaches, including overdose prevention and medically-assisted treatments, would be more effective at addressing fentanyl overdoses and deaths.

Medical examiners should have full discretion to certify medical diagnoses using their expertise and should not be required to use certain terms on death certificates. The purpose of death certificates should be limited to describing medically appropriate information rather than implying intent or criminality.

Notes

The HRO analysis of HB 6 appeared in Part One of the April 27 *Daily Floor Report*.

Expanding definition of official misconduct for prosecuting attorneys

HB 17 by Cook
Effective September 1, 2023

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HB 17 expands the definition of "official misconduct" for which a prosecuting attorney may be removed from office to include the adoption or enforcement of a policy of refusing to prosecute a class or type of criminal offense or instructing law enforcement to refuse to arrest individuals suspected of committing a class or type of offense under state law. The bill defines prosecuting attorney as a district or county attorney. Permitting an attorney employed by or under the direction of the prosecuting attorney to take such action is also considered official misconduct. Such a policy or action is not official misconduct if it is adopted:

- in compliance with state law or an injunction, judgment, or other court order;
- in response to an evidentiary impediment to prosecution; or
- to provide for diversion or similar conditional dismissal of cases.

If a prosecuting attorney is alleged to have permitted an attorney employed by or otherwise under the direction of the prosecuting attorney's office to engage in official misconduct under the bill, HB 17 establishes as a valid defense that the prosecuting attorney took action immediately upon discovering the attorney's conduct.

HB 17 amends provisions on the removal of a prosecuting attorney from office. A petition for removal of a prosecuting attorney may be filed by any resident of the state who, at the time of the alleged cause of removal, lives and has lived for at least six months in the county in which the alleged cause of removal occurred and who is not currently charged with a criminal offense in that county.

In a removal proceeding, a prosecuting attorney's public statement establishing that the attorney adopted, enforced, or intends to adopt or enforce a policy of refusing to prosecute a certain type or class of criminal offense creates a rebuttable presumption that the attorney committed official misconduct. The bill also amends provisions on the selection of an attorney to represent the state in such proceedings.

A court may award any reasonable attorney's fees and costs that the prosecuting attorney personally spent related to the proceeding if the court finds that the attorney did not commit official misconduct as described by the bill.

Supporters said

HB 17 would enhance accountability for prosecuting attorneys who failed to sufficiently defend Texas law. In recent years, concerns have been raised that some district attorneys and county attorneys have adopted polices or issued public statements indicating a refusal to prosecute specific offenses. While prosecutorial discretion, or the authority to determine on a case by case basis whether to charge a crime, is essential to the functions of a prosecuting attorney's job, such discretion does not permit prosecuting attorneys to violate their oath of office or circumvent the Legislature's policy-making authority. HB 17 would address these concerns by broadening the definition of official misconduct, specifying that a policy of refusing to prosecute a class or type of criminal offense or instructing law enforcement to refuse to arrest individuals suspected of committing an offense under state law was grounds for removal. This change would not limit prosecutorial discretion but would deter prosecuting attorneys from publicly declaring a refusal to prosecute entire categories of crime.

By strengthening the mechanism through which prosecuting attorneys are removed, HB 17 also could improve public safety. Refusing to prosecute entire classes of crime could endanger public safety, as the possibility of punishment may be necessary to deter offenders. Without a sufficient deterrent, individuals may be more likely to commit a crime and reoffending could increase. Additionally, law enforcement could feel discouraged from making arrests for such offenses, knowing the charges would be dismissed by the prosecutor. By broadening

the conduct that warrants a petition for removal, HB 17 would help to mitigate these community safety issues.

Although some have suggested that current processes for removal are sufficient, such methods are rarely used to remove a prosecuting attorney. Though the electoral system helps to ensure that prosecuting attorneys are held accountable to Texans every four years, such recourse would not necessarily guarantee that offenders were properly prosecuted, as the general statute of limitations for felony offenses is three years.

While some have argued that HB 17 would enable prosecuting attorneys to be targeted for removal solely based on public statements, such statements could only be used as key evidence and would not be the sole basis of removal. For a prosecuting attorney to be removed, a jury would have to make additional findings establishing that a policy, as described by the bill, was adopted or enforced.

Critics said

HB 17 could limit desirable and necessary prosecutorial discretion, which allows prosecuting attorneys to decide which cases to prosecute based on their office's resources and their community's priorities. Elected prosecutors are in the best position to understand and meet the needs of their constituents, and HB 17 could undermine a prosecutor's ability to take local concerns into consideration.

The additional category of misconduct created by the bill would be unnecessary, as a mechanism for the removal of a prosecuting attorney is already in place. The existing process allows for county-level elected officials to be removed from office for incompetency, intoxication, or official misconduct, which includes an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty and sufficiently addresses current concerns. Additionally, state and federal law provides multiple pathways for prosecutorial accountability, including local elections, state bar discipline, criminal investigation, courts of inquiry, and in some cases, civil suits. Current remedies should be exhausted before creating new processes.

HB 17 could disincentivize elected prosecutors from communicating about office policies for fear of inviting removal petitions. The bill would establish a presumption that prosecuting attorneys have committed official misconduct if they made a public statement indicating they will refuse to prosecute a specific offense, among other actions. By allowing a prosecutor's public statements, rather than their actions, to be used as key evidence in their removal, the bill could decrease transparency with the public, which could in turn impact voters' ability to make informed decisions during elections. Additionally, the bill could put elected prosecutors at a disadvantage during elections, as an opponent might be able to speak to certain issues and priorities that an incumbent prosecutor may avoid out of reasonable apprehension.

Notes

The HRO analysis of HB 17 appeared in Part One of the April 27 *Daily Floor Report*.

Closing the "dead suspect loophole" in the Public Information Act

HB 30 by Moody
Effective September 1, 2023

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HB 30 establishes that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of a crime that did not result in conviction or deferred adjudication is public information if:

- a person, other than a peace officer, who is described by or depicted in the information is deceased or incapacitated; or
- each person, other than a person who is deceased or incapacitated, who is described by or depicted in the information, record, or notation consents to the release of the information.

Supporters said

HB 30 would grant the public access to information about cases involving deceased suspects by addressing the "dead suspect loophole" in current statute. Under the Public Information Act, information held by law enforcement agencies or prosecutors that deals with the detention, investigation, or prosecution of a crime is protected from public disclosure if the case did not result in a conviction or deferred adjudication. This exception was intended to protect innocent suspects who were investigated in a criminal case but never convicted or were acquitted. However, the measure has been used to withhold records in cases where the suspect died before an investigation or prosecution could be completed, including in instances where a suspect died during an arrest or while in police custody. This so-called "dead suspect loophole" has prevented families and communities from accessing crucial information about a deceased or incapacitated suspect. HB 30 would close the loophole, ensuring that this section of Texas' information laws was interpreted as intended.

The bill would increase transparency between law enforcement agencies and the public, which could benefit both the public and the police. Current statute provides an opportunity for bad actors to hide information from the public, which could damage trust between communities and law enforcement. Closing the loophole could improve relations between police and the community by providing for more accountability when police misconduct occurred while also helping to clear law enforcement of wrongdoing when false allegations have been made.

Critics said

No concerns identified for the final version of the bill.

Notes

The HRO digest of HB 30 originally appeared in the May 4 *Daily Floor Report*.

HB 30 as reported out of the House Committee on State Affairs included provisions that allowed for the release of certain information in a police officer's personnel file if a person described or depicted in the materials was deceased, incapacitated, or consented to its release. Critics said this could have allowed further persecution of an officer for false allegations and would have been detrimental to an officer's privacy and work on other cases. Supporters argued that these provisions were narrowly tailored to apply only to information relevant to a deceased or incapacitated suspect and would not have generally opened confidential personnel files. These provisions were removed in the Senate Committee Report version of HB 30.

Raising the age required to obtain semiautomatic rifles

HB 2744 by T. King
Died in the House

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HB 2744 would have created a state-jail felony offense (180 days to two years in a state jail and an optional fine of up to $10,000) for the sale, rental, lease, or gift of a semiautomatic rifle to a person under the age of 21. The bill would have revised current law restricting such transfers to those under the age of 18 and would have applied only to a rifle capable of accepting a detachable magazine and that had a caliber greater than .22. The bill would have included exceptions to the application of the offense for recipients who were peace officers or active and honorably discharged U.S. Armed Forces service members.

The bill also would have exempted the transfer of a semiautomatic rifle to an individual under 21 if the transfer were a temporary loan for the carry or use of the rifle only:

- while in the presence of the transferor;
- while on property owned or leased by the transferor;
- for the purpose of shooting targets on the premises of certain recreational shooting establishments;
- for the purpose of lawful hunting or sporting, or for lawful recreational activity; or
- at a lawful competition involving the use of a firearm.

The bill would have removed this state-jail felony offense from the affirmative defense to prosecution for the transfer of a firearm to a child under age 18 in which the minor had received written permission from a parent or legal guardian.

Supporters said

HB 2744 would help prevent mass shootings in Texas by limiting access to dangerous semiautomatic rifles for individuals under age 21. Texas has seen an increase in mass shootings in recent years, several of which have taken place in schools and were perpetrated by individuals under age 21, such as the gunman who carried out the attack at Robb Elementary School in Uvalde, TX in 2022 with semiautomatic rifles that were legally purchased days after he turned 18. Firearms are currently the leading cause of death for children and adolescents in the United States. Additionally, most of the deadliest mass shootings in recent history have been carried out using a semiautomatic rifle. By restricting access to semiautomatic rifles for those under age 21, HB 2744 would help to prevent mass murders such as the Uvalde school shooting and better protect children and communities across the state.

Existing law sets a minimum age of 21 for an individual to drink alcohol, smoke, or purchase a handgun under federal law, and the minimum age for accessing semiautomatic rifles should be the same. Studies show that the frontal lobe of the brain, which is involved with decision-making, is not fully developed until an individual's mid-20s. As such, those under the age of 21 are still maturing and tend to engage in more reckless behavior. Studies have found that individuals between the ages of 18 and 21 are responsible for a higher rate of firearm fatalities than those over 21. Individuals under age 21 should not have access to such destructive weapons, and the type of semiautomatic rifles restricted by the bill are particularly deadly because they fire rounds at higher velocities than those of other guns, causing more damage to human tissue.

HB 2744 would not violate the Second Amendment of the U.S. Constitution, as the amendment does not mention age and does not prohibit the reasonable regulation of the right to bear arms.

Critics said

HB 2744 would not be an effective method of preventing gun violence or mass shootings. The bill would limit those 18-20-year-olds who can pass background checks from obtaining a rifle, most of whom are law-abiding. Since the majority of murderers have a prior

criminal record, federal law requiring background checks already prevents this group from purchasing firearms. Motivated killers often still find illegal ways of obtaining guns that this bill would not prevent. Additionally, fewer murders occur with the semiautomatic rifles restricted by the bill when compared to those carried out with handguns.

The bill would limit access to firearms for all 18-20-year-olds because of the actions of a few. Individuals in this age group are legally considered adults in many other aspects of life, already having the right to vote, serve in the military, enter into contracts, and marry. The bill would deprive these adults of their constitutional right to bear arms. By limiting firearms access, the bill also could leave those under 21 without the proper means to defend themselves. Rather than restricting firearms based on age or the type of gun, lawmakers should focus on addressing the underlying mental health issues that may cause individuals to commit mass shootings.

A better method of preventing school shootings also would be arming teachers or school staff. Mass shooters often target locations where civilians are unarmed and unable to defend themselves, and arming school staff could act as a deterrent for potential shooters.

HB 2744 could be found unconstitutional and overturned in court, given the precedent set by the Supreme Court decision in the 2022 *New York State Rifle & Pistol Association Inc. v. Bruen* case. This decision revised the test to determine the constitutionality of firearms regulations to be based on the historical tradition regarding the Second Amendment right to keep and bear arms. Based on this test, the bill would likely be struck down by the courts.

Notes

HB 2744 died in the House and did not receive an HRO analysis.

Several other bills were considered during the 88th Legislature related to the regulation of firearms, mass shootings, and school safety.

HB 165 by A. Johnson increases criminal penalties for assault as part of a mass shooting and took effect on September 1, 2023.

HB 3266 by Frazier would have prohibited devices intended to modify handguns but died in the House State Affairs committee.

SB 728 by Huffman requires county clerks to report certain information about mental illness or intellectual disabilities for children over age 16 to the Department of Public Safety for use in federal firearms background checks and took effect September 1, 2023.

HB 3 by Burrows establishes a broad range of school safety measures and took effect on September 1, 2023.

The HRO digests of HB 3266 and SB 728 appeared in the May 9 and May 16 *Daily Floor Reports,* respectively. SB 728 also is included in this section of the *Major Issues* report.

The HRO analyses of HB 165 and HB 3 appeared in the April 11 and April 24 *Daily Floor Reports,* respectively.

Creating offenses for illegal entry and reentry into the state

SB 4 by Perry, Fourth Called Session
Effective March 5, 2024

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SB 4 establishes the offenses of illegal entry and illegal reentry into the state and allows judges and magistrates to order certain persons to return to the foreign nation from which they entered in lieu of prosecution or adjudication. The bill also establishes provisions on immunity for and the indemnification of government officials, employees, and contractors for actions taken to enforce the bill.

Illegal entry and illegal reentry. Under SB 4, a person who is an alien, as defined by federal law, commits a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) if the person enters or attempts to enter the state from a foreign nation at any location other than a lawful port of entry. The offense is a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) if the defendant was previously convicted of illegal entry from a foreign nation.

It is an affirmative defense to prosecution that:

- the federal government has granted the defendant asylum or lawful presence in the United States;
- the defendant's conduct does not constitute a violation of federal law related to improper entry by an alien; or
- the defendant was approved for benefits under the Deferred Action for Childhood Arrivals (DACA) program between June 15, 2012, and July 16, 2021.

A person who is an alien under federal law commits a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) if the person enters, attempts to enter, or is at any time found in the state after the person:

- has been denied admission to or excluded, deported, or removed from the United States; or
- has departed from the United States while an order of exclusion, deportation, or removal is outstanding.

Additionally, the offense is a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) if:

- the defendant's removal followed a conviction for two or more misdemeanors involving drugs, crimes against a person, or both; or
- the defendant was excluded or removed under certain federal immigration law.

The offense is a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) if the defendant was removed after a felony conviction. Under the bill, a defendant charged with illegal entry or reentry is ineligible for community supervision.

Order to return to a foreign nation. After determining that probable cause exists for arrest for an illegal entry or reentry offense, a magistrate may order the arrested person released from custody and issue a written order discharging the individual and requiring the person to return to the foreign nation from which they entered or attempted to enter. In lieu of continuing prosecution or entering an adjudication regarding the offense, a judge also may dismiss the pending charge and issue such an order following the person's appearance before a magistrate.

An order to return to a foreign nation may be issued only if the individual being prosecuted:

- agrees to the order;
- has not previously been convicted of an offense related to illegal entry or reentry;
- has not previously obtained a dismissal and discharge for an illegal entry or reentry offense; and
- is not charged with another class A misdemeanor or higher category of offense.

Before a magistrate or judge issues an order, the arresting law enforcement agency also must collect all available identifying information of the person,

which must include taking fingerprints and using other applicable photographic and biometric measures to identify the person, and cross-reference the collected information with relevant criminal databases and national security threat lists.

Upon conviction of illegal entry or reentry, the judge must enter in the case's judgment an order requiring the person to return to the foreign nation from which they entered or attempted to enter, which takes effect upon completion of the imposed term of confinement or imprisonment. The order must include the manner of transportation of the person to a port of entry and the law enforcement officer or state agency responsible for monitoring compliance with the order.

If a person who is an alien and is charged with or convicted of an illegal entry or reentry offense refuses to comply with an order to return, the person commits a second-degree felony.

Under the bill, a court may not abate the prosecution of an offense related to illegal entry or reentry on the basis that a federal determination of the defendant's immigration status is pending or will be initiated. An inmate serving a sentence for an offense of illegal reentry or refusal to comply with an order to return is ineligible for mandatory supervision or release on parole.

Arrest prohibited at certain locations. A peace officer may not arrest or detain a person for offenses related to illegal entry or reentry if the person is on the premises or grounds of:

- a public or private primary or secondary school for educational purposes;
- a church, synagogue, or other established place of religious worship;
- a health care facility, including a state facility that provides health care or a health care provider's office, if the person is there to receive medical treatment; or
- a SAFE-ready facility or another facility that provides forensic medical examinations to sexual assault survivors, provided the person is there to obtain a forensic medical examination and treatment.

Liability and indemnification. A state or local government official, employee, or contractor is immune from liability for damages arising from a cause of action under state law resulting from an action taken to enforce provisions related to illegal entry or reentry during the course and scope of the individual's duties. State and local governments also must indemnify an official, employee, or contractor for damages arising from a cause of action under federal law and for reasonable attorney's fees incurred in defense of a criminal prosecution resulting from an action taken to enforce provisions related to illegal entry or reentry during the course and scope of the individual's duties.

Provisions on immunity and indemnification for civil actions do not apply if a court or jury determines that the state or local government official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness.

Supporters said

SB 4 would help to humanely deter illegal immigration at Texas' southern border by authorizing law enforcement to detain migrants entering the state illegally and allowing a judge or magistrate to order the person back to the foreign nation from which the person entered. Despite a significant influx of migrants along the southern border, the federal government has failed to sufficiently enforce immigration laws. The bill would address the critical situation at the Texas-Mexico border by giving law enforcement officers the tools and authority necessary to keep Texans safe. As illegal entry is not currently a crime under state law, state law enforcement officers can only arrest migrants for the offense of criminal trespass when permitted by landowners near the border. By allowing the offenses of illegal entry and illegal reentry to be prosecuted at the state level, SB 4 would enable state authorities to detain migrants without having to rely on cooperation from landowners.

SB 4 would not enable the prosecution of every undocumented immigrant in the state as it does not create an offense for unlawful presence. Rather, the bill is aimed at immigrants who were evidenced to have crossed the border illegally and the majority of arrests for this offense would likely take place near the border. Furthermore, the bill would have a limited effect on communities further away from the border as a magistrate must determine that the law enforcement officer had probable cause to make the arrest. The burden of proof would then be on the prosecutor to provide evidence that a person entered Texas unlawfully, which would be more difficult if the arrest took place further from the border. Additionally, those with a legal presence would have an affirmative defense to prosecution.

While some have expressed concerns about

duplication of federal law, many other existing state laws also duplicate federal statute. SB 4 would not conflict with federal law or the decision in the 2012 Supreme Court Case, *Arizona v. United States*, as the bill is modeled after existing federal statute and, unlike the policy challenged in that case, would not create an offense for unlawful presence. The bill would not grant Texas law enforcement the power to deport individuals, instead providing a magistrate or judge with the option to order a migrant to return to the country from which the person entered in lieu of prosecution or adjudication. A magistrate or judge also could not order a person to return without the person's consent. Allowing a judge or magistrate to order migrants' return would be less costly than continuing to detain and house those arrested under current trespassing laws, since most migrants would likely rather return across the border than face prosecution.

Those who crossed the border illegally would be taken to a port of entry and ordered to return only after appearing before a magistrate or a judge where they would have the right to counsel and the right to an interpreter, ensuring due process. Under SB 4, a person could still claim asylum if the person crossed the border illegally, but a pending asylum application would not be an affirmative defense to prosecution.

Texas has memorandums of understanding with several Mexican states regarding the return of migrants across the border. If Mexico refused to accept someone who was sent back by Texas law enforcement, the person likely would not be prosecuted for illegal reentry or refusal to comply with an order to return as the person's ability to cross was out of the person's control.

Indemnification and immunity provisions established in the bill would protect officials acting in good faith to uphold the law while still allowing courts to punish bad actors.

Critics said

Increasing the criminalization of migrants under SB 4 would not secure the border or deter unlawful immigration, as these methods have been tried both through Texas' Operation Lone Star and at the federal level and have been historically ineffective. Additionally, the bill could erode trust in law enforcement and compromise, rather than improve, public safety, as undocumented individuals and those around them could be further disincentivized from reporting crimes for fear of deportation or arrest.

SB 4 would subject migrants across Texas to the threat of detention or forced removal and could lead to an increase in racial profiling. Although the bill would require that law enforcement officers have probable cause to make an arrest, a person could still be detained anywhere in Texas for a variety of reasons, as the bill would not explicitly state that "probable cause" constituted an officer witnessing the individual physically crossing the border. The bill also would not require officers or magistrates to undergo training in how to implement the bill. Immigration law is complex, and magistrates or law enforcement officers may not have the expertise needed to determine an individual's immigration status and whether or not satisfactory evidence exists that the migrant crossed the border illegally. Under the bill, even individuals with a lawful presence, U.S. citizens, or others with affirmative defenses to prosecution could face incarceration and a lengthy and difficult trial process.

SB 4 would be duplicative of federal law banning improper entry into the United States. The bill also could present constitutional challenges, as state law enforcement does not have the constitutional authority to enforce immigration laws or deport people, and taking a person to a port of entry and ordering the person to either leave or be arrested could be construed as de facto deportation. Additionally, the bill could force the return of individuals attempting to seek asylum, which migrants may legally request even if they did not cross at a port of entry. An arrest or an order to return could delay the already tedious and time-consuming process of applying for asylum or could result in an individual being sent back without the chance to apply.

By permitting a magistrate to order a person to leave the country without a trial, the bill would allow for punishment without adequate due process. The choice between returning to potentially unsafe conditions at the southern border or facing prosecution could constitute coercion rather than consent. Magistration is typically a fast-moving administrative process rather than a meaningful hearing. Prosecutors are not typically involved at this point and are not required to present evidence, and defendants do not yet have the right to an attorney. Under the bill, individuals would be asked to make life-changing decisions without proper counsel. Additionally, some magistrates are not required to have law degrees and would not necessarily be qualified to assess whether an arresting officer had probable cause.

SB 4 would require counties and taxpayers to assume the unknown costs of housing and prosecuting migrants arrested for offenses created under the bill. Many counties

already have overcrowded jails and are struggling to staff existing detention centers. An increase in migrant arrests could flood local jails and require the construction of new detention facilities, further burdening local communities and requiring local law enforcement to divert funding from other public safety needs.

There would be no guarantee that Mexico accepted individuals ordered to return who were not Mexican citizens. Although Texas has agreements with some Mexican states regarding the return of migrants, these are non-binding and not enforceable as there is no agreement between the Mexican and U.S. federal governments, both of which have exclusive jurisdiction over immigration policies in their respective countries.

SB 4 also would require that state and local governments indemnify officials for damages arising from a cause of action resulting from the enforcement of the bill. Tax dollars should not be used to defend officials who could potentially be perpetrating criminal acts.

Notes

The HRO analysis of SB 4, Fourth Called Session, appeared in the November 14 *Daily Floor Report*.

Several other bills that would have created state offenses for improper or illegal entry were proposed in previous sessions of the 88th Legislature but failed to pass, including **HB 1600** by Hefner, **SB 2424** by Birdwell, **SB 2** by Birdwell, First Called Session, **HB 4** by Spiller, Third Called Session, **HB 11** by Oliverson, Third Called Session, and **SB 11** by Birdwell, Third Called Session.

HB 7 by Guillen also would have created the criminal offense of improper entry into the state in addition to establishing the Texas Border Force, a minimum sentence of ten years for the offense of smuggling of persons, and a landowner compensation program, among other provisions.

HB 20 by Schaefer would have established the Border Protection Unit and a Legislative Border Safety Oversight Committee as well as provisions on suspension of entry into the state during certain public health emergencies. The bill also would have created a third-degree felony offense for trespass while knowingly entering the state, regardless of the person's immigration status, along with a civil penalty up to $10,000 for such an offense.

The HRO digests of HB 7, HB 20, and SB 2424 appeared in the May 7, May 9, and May 23 *Daily Floor Reports*, respectively. The HRO analysis of HB 4 (88-3) appeared in the October 25 *Daily Floor Report*. HB 1600, SB 2 (88-1), HB 11 (88-3), and SB 11 (88-3) did not receive an HRO analysis.

The Legislature enacted other bills related to border security.

SB 4 by Flores, Third Called Session, increases the penalties for smuggling of persons and operation of a stash house to a third-degree felony. The HRO analysis of SB 4 (88-3) appeared in the October 25 *Daily Floor Report*.

SB 3 by Huffman, Fourth Called Session, appropriates $1.54 billion for border security operations and the construction, operation, and maintenance of border barrier infrastructure. The HRO analysis of SB 3 (88-4) appeared in the November 14 *Daily Floor Report*.

Revising firearm background check reporting for certain juveniles

SB 728 by Huffman
Effective September 1, 2023

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SB 728 adds requirements for reporting mental health and intellectual disability information on children aged 16 and older for purposes of a federal firearm background check.

The bill revises the definition of "federal prohibited person information" for the purposes of federal firearm reporting to specify that such information identifies an individual who is at least 16 years old. The bill also adds to the definition of "federal prohibited person information" any information that identifies a child who is at least 16 years old and has been:

- found unfit to proceed in court as a result of mental illness or an intellectual disability;
- found not responsible for the child's own conduct as a result of mental illness or an intellectual disability;
- ordered by a court to receive inpatient mental health services as a result of mental illness; or
- committed by a court to a residential care facility as a result of an intellectual disability.

SB 728 applies to individuals who are at least 16 years old current law that requires court clerks to forward certain identifying information of a prohibited person to the Department of Public Safety (DPS) for use in federal firearms background checks. The bill also adds such reporting requirements for certain court actions related to the mental condition of a child who is at least 16 years of age for use in federal firearms background checks.

Upon request of DPS, a court clerk is required to forward a signed court order containing federal prohibited person information to DPS for an audit of records provided to the FBI for use with the National Instant Criminal Background Check System (NICS). If DPS determines that such a record is incomplete or invalid, DPS is required to notify the court clerk, who must forward any additional information needed to DPS. The bill also exempts certain records from confidentiality provisions.

Supporters said

SB 728 would align state reporting requirements with federal background check laws and ensure that dangerous individuals over age 16 did not have access to firearms. By requiring clerks to forward certain information to DPS, which would then be shared with the FBI's NICS, the bill would give federal law enforcement more information about people with certain mental health conditions to better determine whether these individuals should be permitted to purchase a firearm. These reporting requirements are already required by state law for adults, but there has been confusion over whether or not they apply to juveniles, which has led to loopholes in compliance and calls for clarification of the law. SB 728 would address this issue by applying these existing reporting requirements to certain juveniles.

This clarification also would increase safety and reduce gun violence in communities across Texas while preserving the rights of people who are capable of responsible gun ownership. SB 728 would not create a "red flag law," which is a law that allows a court to prevent an individual from buying a firearm in certain cases regardless of whether they had committed a crime or received a court order. Existing processes would ensure that corrections to an individual's prohibited person status could be made if the mental health issue was resolved or was reported in error.

SB 728 would ensure that state and federal background check databases were linked and continued to reflect accurate information. Texas does not currently have a statewide information database for court decisions regarding someone's mental illness or intellectual disability. As a result, the FBI must contact each county court individually if such information is needed for a firearm background check. SB 728 would ensure that this sensitive information was stored in one place, increasing accessibility and efficiency.

Critics said

SB 728 would restrict the legal purchase and possession of firearms and could infringe on people's privacy by requiring state reporting to NICS on all juvenile inpatient mental health cases. The bill's reporting requirements would apply universally to juveniles with no exceptions made for cases in which there was no violent risk or the mental health issue was resolved.

The bill could discourage children from coming forward about mental health issues if they knew that doing so would result in placement on the "prohibited persons" list. This could stigmatize mental illness and penalize individuals for seeking help when they most need it. Additionally, by adding more names to the NICS database, SB 728 could increase the risk of background check errors which may lead to false denials.

Notes

The HRO digest of SB 728 appeared in the May 16 *Daily Floor Report*.

Continuing TCOLE, adopting Sunset recommendations

SB 1445 by Paxton
Effective September 1, 2023

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SB 1445 continues the Texas Commission on Law Enforcement (TCOLE) until September 1, 2031 and adopts certain policy recommendations from the Sunset Advisory Commission related to standards of conduct, licensing and hiring procedures, and data collection.

Advisory committees. SB 1445 allows TCOLE to establish advisory committees to make recommendations on programs, rules, and policies that it administers. If an advisory committee is established under the bill, TCOLE is required to adopt rules on the purpose, role, responsibility, goals, and duration of the committee, among other policies.

Minimum standards for law enforcement agencies. SB 1445 removes provisions requiring an entity that first created a law enforcement agency or police department and that first began to commission, appoint, or employ officers on or after September 1, 2009, to submit certain information about the agency or department to TCOLE upon its creation. The bill instead requires TCOLE, with input from an advisory committee, to establish minimum standards for the creation or continued operation of a law enforcement agency based on the function, size, and jurisdiction of the agency. The minimum standards must address certain factors, including certain information that was previously required to be submitted to TCOLE by an agency or department. The minimum standards must include:

- a determination on the public benefit of creating the agency in the community;
- the sustainable funding sources for the agency;
- the physical resources available to officers;
- the physical facilities of the agency;
- certain agency policies specified in the bill;
- the agency's administrative structure;
- liability insurance; and
- any other standard information TCOLE considers necessary.

Discharge designation. SB 1445 repeals provisions requiring a law enforcement agency to include on an employment termination report a statement on whether the license holder was discharged generally, honorably, or dishonorably and an explanation of the circumstances under which the person resigned, retired, or was terminated. Provisions governing suspending the license of an officer who was dishonorably discharged and provisions governing petitions for the correction of an employee termination report are also repealed.

Model policies. TCOLE, with input from an advisory committee, must adopt certain model policies by March 1, 2024, to prescribe procedures related to personnel files, medical or psychological examinations of TCOLE license holders or applicants, officer hiring, and misconduct investigations.

A model policy establishing procedures on hiring and misconduct investigations must require a law enforcement agency to include documentation of the completed investigation in the officer's personnel file, specify that an officer under investigation is entitled to internal due process procedures, and require an agency to request and review any information on an applicant for employment maintained by TCOLE in a licensing database required under the bill. A model policy also must establish a provisional hiring period of at least 45 days and allow an agency to terminate employment of an officer if information on a misconduct investigation of the officer is made available to the agency by TCOLE.

Law enforcement agencies are required to adopt the model policy or a substantially similar policy. TCOLE is required to maintain all reports of completed misconduct investigations in the licensing status database and notify an agency seeking to appoint a license holder of a completed investigation report within five business days.

A law enforcement agency must provide a license holder's personnel file to TCOLE within 30 days after the license holder separates from the agency or at TCOLE's request.

Databases. TCOLE is required to establish and designate certain databases by March 1, 2024, to maintain information about officers and officer licenses. The bill requires TCOLE to establish a licensing database and, upon request, make available to a law enforcement agency any relevant information maintained in the database for license application, hiring, and preemployment purposes. TCOLE also is required on request to provide an officer any information maintained in the database regarding the officer, including information related to a misconduct investigation.

The bill also requires TCOLE to designate one or more national law enforcement databases that a law enforcement agency must access in order to complete required preemployment background checks. Additionally, TCOLE must establish a public database containing the personal service reports of each licensed officer. A service report must be compiled in a format that makes the information readily available to the public and must include certain information about each officer.

TCOLE must adopt rules to exclude certain officers' personal service reports from the database if including the report would create a safety risk for an undercover officer or an officer involved in an active sensitive operation. The adopted rules must allow an officer or the employing law enforcement agency to request the officers' report be excluded from the database. This request is confidential and is not subject to disclosure.

Before a law enforcement agency or governmental entity hires a person for whom a license is sought, the agency or entity must review any information related to the person available in the above databases or in a file provided to TCOLE under out-of-state license holder provisions.

Subpoenas. TCOLE is authorized to compel by subpoena the production for inspection or copying of certain license application, psychological and physical examination, and training records that are relevant to investigations of an alleged violation of statute governing law enforcement officers or of a TCOLE rule. A court is required to order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Other provisions. The bill adds provisions on the issuance of TCOLE licenses to out-of-state license holders, including requiring TCOLE to request any relevant personnel files and records on the applicant from the licensing authority in the other state. If the applicant's out-of-state license has been revoked or suspended at the time of application for a reason that would also be grounds for revocation or suspension in Texas, TCOLE may not issue the applicant a license.

SB 1445 revises provisions on deadlines for officer training and requesting information on complaints. The bill also adds procedures for emergency license suspensions.

Supporters said

SB 1445 would improve the efficiency and effectiveness of the Texas Commission on Law Enforcement (TCOLE) by increasing statewide standards for professionalism, training, and accountability for law enforcement agencies and officers in Texas.

The bill would remove provisions governing standardized discharge categories, since the designations of general, honorable, or dishonorable discharge have proven to be an unreliable metric for hiring agencies in measuring the quality of candidates. "Honorable" designations often provide hiring agencies with inaccurate implications regarding an officer's employment history, since many "dishonorable discharge" designations are appealed and amended to "honorable." Additionally, a dishonorable discharge is not necessarily the result of misconduct, and this designation can lead hiring agencies to reject otherwise qualified candidates. The bill would grant hiring agencies access to a candidate's full personnel file, which would increase transparency regarding the candidate's past and thoroughness in hiring practices.

By requiring TCOLE to adopt certain model policies, the bill would allow the agency to set clear expectations for appropriate conduct for licensees and would create a more consistent and fair basis to evaluate licensees' actions. Imposing statewide minimum standards also would provide a level of protection from liability for law enforcement by instituting a clear benchmark for acceptable action.

The bill would require law enforcement agencies to check a national law enforcement database prior to hiring or granting a license to a law enforcement officer and would authorize TCOLE to designate one or more databases for use by law enforcement agencies when conducting pre-employment background checks. The use of these databases would improve law enforcement hiring and separation practices by ensuring that only quality candidates were considered for officer positions.

Given the diverse group of stakeholders TCOLE

impacts, the commission would benefit from statutory authority to formally establish advisory committees. The bill would allow TCOLE to establish committees in areas such as mental health and new technologies, where staff may require more expertise. By soliciting input from such committees, TCOLE could receive recommendations from knowledgeable experts on how to best serve their officers and the public as the field of law enforcement continues to change.

By more clearly defining TCOLE's authority to issue administrative subpoenas and maintain the confidentiality of complainants, SB 1445 would help strengthen oversight for law enforcement agencies statewide. The bill would authorize TCOLE to issue administrative subpoenas, which would help ensure that the agency had access to records needed to effectively investigate licensing matters and make appropriate decisions about possible enforcement actions. TCOLE also would have the authority to maintain the confidentiality of complainants when possible. Protecting complainants' identities would reduce the fear of retaliation that could otherwise stifle legitimate complaints and could protect agencies from accusations of retribution.

Critics said

SB 1445 would eliminate an important tool in hiring quality licensed officers by removing the designation on the employment termination form regarding whether an officer was discharged generally, honorably, or dishonorably. Removing this designation could worsen the state's "wandering officer" problem by allowing more officers who were fired or dishonorably discharged to seek employment at other agencies that did not have access to the officer's termination information.

The current discharge designations and related statute provide a concise, standardized report of an officer's history as well as provisions for due process including an appeal for licensees. Eliminating this resource and requiring law enforcement agencies to conduct an exhaustive examination of each officer's background documents could create an additional burden for hiring agencies and extend hiring timelines for agencies in Texas, many of which are facing staffing shortages. If the ability for agencies to designate how an officer was discharged is eliminated, there would be no other provision in statute that requires an agency to document how an officer separated from the agency.

Notes

The HRO analysis of SB 1445 appeared in the May 18 *Daily Floor Report*.

Another bill that amended requirements for TCOLE, **SB 1402** by Zaffirini, effective September 1, 2023, requires TCOLE to consult with the Sexual Assault Survivor's Task Force to establish a basic education and training program on child sexual abuse and adult sexual assault, including best practices and trauma-informed response techniques to effectively recognize, investigate, and document such cases.

The HRO analysis of SB 1402 appeared in the May 22 *Daily Floor Report*.

Continuing TJJD, amending duties of the Office of Independent Ombudsman

SB 1727 by Schwertner
Effective September 1, 2023

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SB 1727 continues the Texas Department of Juvenile Justice (TJJD) until September 1, 2027 and adopts certain policy recommendations from the Sunset Advisory Commission on regionalization plan requirements, the Texas Juvenile Justice Board's composition and duties, inspection procedures, and certification requirements for juvenile probation officers. The bill also revises the duties and authority of Office of the Inspector General of TJJD and the Office of the Independent Ombudsman.

Regionalization and county resources. Under the bill, TJJD is required to update its regionalization plan biennially and include in the plan specific, actionable steps to enhance regional capacity, coordination, and collaboration among juvenile probation departments to keep children closer to home and out of TJJD facilities. SB 1727 establishes required components of the updated plan, including an analysis of commitment rates to TJJD by county and region and information on the department's compliance and internal goals. Additionally, the bill specifies relevant stakeholders with whom TJJD must consult in developing the plan, including the Advisory Council on Juvenile Services, individuals formerly involved in the juvenile justice system, and parents and guardians of children in TJJD's custody, among others.

TJJD is authorized to incentivize diversion from TJJD commitment and collaboration between county juvenile probation departments in its funding formula and grantmaking process. SB 1727 also requires TJJD's board to adopt rules specifying that juvenile probation departments must apply for a child's placement in a regional specialized program before a juvenile court commits a youth to TJJD. TJJD is authorized to establish exceptions for circumstances in which the department considers diversion from state custody inappropriate.

Under the bill, TJJD must partner with a university to inventory and map resources available for youth in the juvenile justice system and TJJD's board must adopt rules requiring juvenile probation departments to report certain county-level data on resource, program, and service gaps identified by TJJD. Reports must include information on the needs of children committed to TJJD that are not being met with community resources and the types of resources that, if available in the community, could allow juvenile probation departments to keep children closer to home as an alternative to commitment to a TJJD facility.

Texas Juvenile Justice Board and agency administration. SB 1727 reduces the Texas Juvenile Justice Board's membership from 13 to nine members by decreasing the respective number of representatives from the general public and from a county commissioners court from three to one, respectively. The county commissioners court board members are required to have juvenile justice experience. The bill also gives the governor the option to appoint a representative from a local mental health authority and requires that an educator appointed as a board member have juvenile justice experience.

SB 1727 also authorizes the board to delegate its responsibilities to TJJD's executive director and requires the board to provide clear direction and oversight for any duties assigned to the executive director.

The bill establishes experience and education qualifications for TJJD's executive director and requires TJJD to track certain actions taken by the executive director, such as the authorization of early discharge for a child on parole or the selection of a child for a home placement.

The board may establish advisory committees as necessary but is required to establish a youth career and technical education advisory committee. The bill also adds the commissioner of the Department of Family and Protective Services to TJJD's Advisory Council on Juvenile Services, which is required to assist TJJD in improving

information sharing between agencies serving youth in the juvenile justice and child welfare systems, among other duties.

Risk-based inspections. TJJD is required to develop a comprehensive set of risk factors to use in the inspection process for state and county facilities and prioritize inspections based on the relative risk level of each entity. At the request of TJJD, juvenile probation departments and private facilities must provide information to assist with the implementation of the risk-based inspection schedule.

Employee qualifications and certification. The bill removes existing experience and education requirements for juvenile probation officers and requires TJJD by rule to establish new minimum education and experience requirements for juvenile probation officers without creating barriers to entry to the profession.

Facilities. SB 1727 requires the board to authorize juvenile probation departments to house a child committed to TJJD in a pre- or post-adjudication secure facility while the child awaits transfer to TJJD.

The bill also allows TJJD and juvenile probation departments to use or contract with a facility constructed or previously used to confine adult offenders if the facility is appropriately retrofitted to accommodate youth-specific requirements and needs.

Sentencing and confinement. The bill requires TJJD to place a child awaiting juvenile adjudication or adult prosecution for committing a first- or second-degree felony while in TJJD's custody in the most restrictive setting appropriate.

TJJD is required to refer youth between 16 and 18 years old to juvenile court for approval of a transfer to the Texas Department of Criminal justice (TDCJ) if the youth has not completed a determinate sentence or was convicted of certain felonies, including assault of an officer, while in TJJD's custody.

Juvenile justice data. TJJD is authorized to share identifiable and non-identifiable data to certain stakeholders for specified purposes, including research and statistical purposes and TJJD-approved projects.

The bill requires TJJD to publish on its website annually and quarterly, as applicable, aggregated information on the number of children committed to TJJD and its other facilities categorized by offense level, sentence type, age, and sex. The agency also is required to publish a statistical analysis of the complaints received against TJJD officers on its website.

Office of the Inspector General. SB 1727 removes certain references to the Office of the Inspector General (OIG), and revises certain OIG statute. The bill applies certain provisions on the installation and use of tracking equipment and access to communications to OIG and law enforcement officers appointed by the inspector general and revises provisions related to paid leave for certain OIG employees.

Office of the Independent Ombudsman. SB 1727 amends provisions relating to the duties of the Office of the Independent Ombudsman (OIO) of TJJD and authorizes OIO to investigate, evaluate, and secure the rights of children placed in a county-level facility.

SB 1727 requires TJJD and juvenile probation departments to notify OIO of any private facility the agency or department contracts with to place children. OIO is also required to establish a risk assessment tool for the purposes of implementing a risk-based inspection schedule.

Supporters said

SB 1727 would continue the Texas Juvenile Justice Department for four years as the agency's mission and functions continue to be necessary despite TJJD's operational challenges. Since its inception, TJJD has faced a cycle of instability marked by crises, frequent leadership changes, and quick reforms that have prevented the agency from focusing on long-term plans and effective legislative reforms designed to keep youth out of TJJD custody. While some have suggested abolishing or restructuring TJJD and transferring TJJD's functions to the juvenile probation departments, such a change would not necessarily address the issues that TJJD must handle to stabilize the juvenile justice system. TJJD should continue operating its facilities until county-level capacity is increased. Recent strains on juvenile probation departments, including the impact of absorbing TJJD's intake backlog and staff shortages, demonstrate that juvenile probation departments do not yet have the capacity to take on youth in TJJD custody. TJJD also provides oversight to ensure county-level facilities and services are safe and effective, a role that some county departments may not have the resources to fulfill.

While some recommend transferring TJJD's functions or merging it with another agency such as the Texas

Department of Criminal Justice (TDCJ), this would not necessarily provide substantial benefits. Though both agencies provide similar services, TJJD and TDCJ serve different populations with different rights, needs, and risks. A merger would require TDCJ to implement federal standards for youth in adult facilities that could create operational challenges. Expanding a program for youth under TDCJ would require capital improvements, pay parity, and training, rather than investment in measures to address current challenges and expand regionalization. TDCJ would have to take on a variety of TJJD's regulatory functions that would be new to the agency. Rather than abolish or transfer TJJD, SB 1727 would improve agency functions by advancing regionalization reforms, strengthening the Texas Juvenile Justice Board's oversight and training requirements, and adjusting certification requirements for county-level employees, among other measures.

Regionalization and county resources. By requiring TJJD to update its regionalization plan biennially, incentivize diversion in its grantmaking process, and partner with universities to map resources and identify gaps in services for justice-involved youth, SB 1727 would ensure that TJJD was taking appropriate steps to maximize regionalization resources and diversion opportunities. The bill would require the plan's contents to be relevant and actionable, which could help to advance regionalization efforts. Additionally, authorizing TJJD to promote diversion through its financial incentives would enable TJJD to better implement regionalization reforms and maximize state resources. SB 1727 would provide for diligent regionalization planning with opportunities for collaboration between stakeholders to ensure that counties were equipped to continue providing local resources as an alternative to state commitment.

While some have suggested that SB 1727 should require TJJD to accept commitments from county facilities within a specified time period, such a measure could result in overcrowding in state facilities. TJJD works closely with county probation departments and moves youth awaiting transfer to TJJD based on capacity and resources available in each county. Eliminating TJJD's discretion in this area could overwhelm state facilities.

Facilities. Authorizing TJJD to retrofit facilities previously used for confining adults would help to provide a small number of probation departments with the resources needed to safely supervise youth. Facilities would still be required to meet federal standards to ensure suitability for youth.

Sentencing and confinement. Allowing for the transfer of certain youth to TDCJ would codify a standard practice at the agency that is necessary to keep other youth and staff safe. Children who commit crimes, such as assaulting an officer or another detainee within TJJD, should be held accountable. Nevertheless, transfer to an adult prison is often the last resort, as the agency strives to exhaust all resources and consider a variety of factors, including mental health needs, before recommending a transfer to TDCJ.

Critics said

SB 1727 may not be enough to address TJJD's systemic issues. Without certain structural changes, TJJD could continue in its cycle of crisis and reform that has prevented the agency from providing rehabilitative services and keeping youth closer to home. The bill should require TJJD to develop a plan for the staggered closure of the five state facilities and a model to serve youth at the county level in their communities, where recidivism and costs are lower. While TJJD has made strides in reducing commitments to state facilities with diversion and regionalization efforts, the state could go further by ensuring that TJJD had a plan to close its secure facilities. Such a plan could allow TJJD to focus on its grant-making and regulatory role, services that juvenile probation departments will continue to need and that could improve rehabilitation outcomes and reduce recidivism.

Regionalization and county resources. SB 1727 should require TJJD to broaden the focus of its regionalization plan to include expanding community-based services and collaboration among youth-serving state agencies. Building out community services, such as mental health, substance abuse, and parent skill-building services, by providing flexible grant funding to providers and increasing collaboration and information-sharing among youth-serving agencies could help children stay in their homes and communities and out of facilities altogether.

The bill should require TJJD to accept youth committed to its custody within a specified number of days to ensure that children are not awaiting admittance to TJJD in county probation departments for long periods of time. Recently, youth committed to TJJD have had to wait in county facilities due to decreased capacity at TJJD facilities. This issue has created additional costs to counties, some of which have been overcrowded and lacking the capacity to confine additional youth. Furthermore, the time a child spends in a county facility awaiting transfer is not counted toward the child's sentence, which can cause indeterminate delays in a

minor's release back into society.

Facilities. SB 1727 should not allow TJJD to retrofit facilities that formerly confined adults. Adult facilities are not built to serve youth and the environment of a facility is an important component in making youth feel safe. It is unclear whether an adult facility could be properly altered to be an effective placement for youth.

Sentencing and confinement. Requiring TJJD to request a transfer to TDCJ for certain teens could increase the number of youth in adult prisons. While youth offenders should be held accountable, transferring a high-risk and high-needs child to an adult prison may decrease that child's chances of reform because rehabilitation is not prioritized in the same manner that it is in the juvenile system. Rather than being transferred, youth with the most disruptive behavior should receive intensive, specialized, and developmentally-appropriate treatment.

Other critics said

SB 1727 should transfer TJJD's functions and duties to TDCJ to provide the juvenile justice system with better administrative and financial backing. TDCJ could comply with federal standards by operating a separate facility for youth. Because TDCJ is a larger agency with more financial resources, such a merger could ensure that the juvenile system had the oversight and stability it needs.

Notes

The HRO bill analysis of SB 1727 appeared in the May 16 *Daily Floor Report*.

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*Finally approved

Enhancing the penalty for voting illegally to a felony

HB 1243 by Hefner

Effective September 1, 2023

HB 1243 enhances the offense of voting illegally from a Class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) to a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) unless the person is convicted of an attempt to vote illegally, which is a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000).

Supporters said

HB 1243 would help to secure the state's elections by reinstating the felony offense for illegal voting that was in place until 2021. Free and fair elections are the foundation of democracy and enhancing this offense to a second-degree felony would appropriately demonstrate the seriousness of undermining elections. An increased penalty also would help to deter individuals from voting illegally.

While some have suggested that HB 1243 could lead to individuals being charged for a mistake while voting, the bill would not affect the consideration of mens rea, or criminal intent, in election fraud cases, meaning a person who was charged with illegal voting could not be convicted unless the person knowingly committed the offense.

Critics said

By enhancing the penalty for illegal voting from a misdemeanor to a felony, HB 1243 could discourage Texas voters, especially people of color and formerly incarcerated individuals, from voting. Voter eligibility requirements can be confusing and change without sufficient notice. Without better education about voting requirements, voters could be disenfranchised due to fear of being incarcerated. Lawmakers should focus on better educating voters rather than increasing penalties.

Since 2021, when the Legislature reduced the penalty for illegal voting from a felony to a misdemeanor, there has been no evidence of increased election fraud. The offense's classification as a misdemeanor is a sufficient deterrent from illegal voting, and enhancing the penalty to a felony would be disproportionately harsh.

A person charged with illegal voting could have difficulty proving that the person did not know they were voting illegally. This could lead to individuals acting in good faith and without any criminal intent to be incarcerated for making a mistake when voting, which would unnecessarily burden taxpayers with the cost.

Notes

The HRO analysis of HB 1243 appeared in Part One of the April 27 *Daily Floor Report*.

Lawmakers proposed other bills that would have created or enhanced penalties for election-related offenses. **SB 1907** by Bettencourt, which died in the House Elections Committee, would have enhanced the penalties for an election judge knowingly failing to return vote counts in a timely manner or knowingly failing to include required information in precinct returns from a Class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000) to a Class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

SB 1911 by Bettencourt, which died in the House Elections committee, would have created Class A misdemeanors for intentionally failing to provide an election precinct with the required number of ballots or intentionally failing to promptly supplement requested ballots as an election authority. The bill also would have increased the penalties for failure to distribute or deliver election supplies, obstructing distribution of election supplies, and unlawfully revealing information before polls close.

SB 1907 and SB 1911 did not receive an HRO analysis.

Establishing a process to obtain explanations of election irregularities

SB 1039 by Bettencourt
Died in the House

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SB 1039 would have established a process for individuals involved in an election to obtain information related to possible election irregularities and would have required the secretary of state to perform election audits based on this information.

The bill would have allowed certain individuals involved in an election to request from the county clerk or other election authority an explanation and supporting documentation for:

- an action taken by an election officer that appeared to violate the Election Code;
- irregularities in results in a precinct, at a polling place, or at an early voting polling place;
- inadequacies or irregularities of documentation required to be maintained; or
- discrepancies in the results of a reconciliation of ballots between the number of voters and the number of votes cast.

A person could have made a request if the person participated in the relevant election as:

- a candidate;
- a county or state chair of a political party;
- a presiding judge;
- an alternate presiding judge; or
- the head of a specific-purpose political committee that supported or opposed a ballot measure.

Within 20 days after the request was received, the county clerk or other authority would have had to provide the requested explanation and any supporting documentation.

A requestor who was not satisfied with the information received could have issued a request for further explanation and supporting documentation. Within 10 days of receiving the request, the county clerk or other authority would have had to provide additional information. A requestor who was not satisfied with the information provided could then have issued a request to the secretary of state for an audit of the issue.

If the secretary of state determined that the information provided to the requestor was insufficient, the secretary would have had to immediately begin an audit of the identified irregularity at the expense of the county or other authority conducting the election. At the conclusion of the audit, the secretary of state would have had to provide notice of the findings to the person who requested the audit and to the election authority.

The secretary of state would have been able to make a determination that a violation of the Election Code occurred solely on the basis of submitted evidence without conducting an audit. The secretary of state would have been required to send notice of this determination to the person who submitted the audit request and to the election authority.

If the secretary of state determined that a violation occurred following an audit, the secretary could have appointed a conservator to oversee elections in the county where the violation occurred.

In addition to the required notice, the secretary of state would have had to provide special notice to the election authority detailing any violation of the Election Code. If the county clerk or other authority did not remedy a violation within 30 days of receiving the notice, the secretary of state would have been required to assess a civil penalty of $500 for each unremedied violation and, if possible, remedy the violation on behalf of the election authority. If the secretary of state could not remedy the violation, the secretary would have been required to assess an additional penalty for each day the authority did not remedy the violation.

The secretary of state would have been required to maintain a record of county clerks or other authorities that

conducted elections who had been assessed a civil penalty and publish the record on its website. The attorney general could bring an action to recover a civil penalty that had not been paid, which would have had to be deposited to the general revenue fund.

Supporters said

By creating a process by which individuals involved in elections could obtain information about suspected election irregularities and the secretary of state could audit an election authority, SB 1039 would increase public confidence in the accuracy of election outcomes, promote transparency, and improve trust in our democratic system. This new process would help election administrators obtain explanations for election irregularities. Publishing the results of the audit could help to deter bad actors from causing irregularities and would educate officials acting in good faith to reduce mistakes. Time is of the essence in election-related investigations and SB 1039 would allow for irregularities to be addressed on an expedited timeline relative to current law.

Critics said

SB 1039 would require election staff to respond to requests while attending to existing duties, which could be burdensome. Given limited resources, staff may not have the capacity to address all of the requests that could be submitted under the bill. SB 1039 also would not provide clear definitions, procedures, or defenses for administrators, potentially putting election staff in danger of unchecked state overreach. Lawmakers should focus on preventative measures to election irregularities, such as requiring education hours for election administrators.

Notes

The HRO digest of SB 1039 appeared in the May 23 *Daily Floor Report*.

SB 1933 by Bettencourt, effective September 1, 2023, also establishes authority with the secretary of state for administrative oversight of elections. The HRO digest of SB 1933 appeared in the May 20 *Daily Floor Report* and appears in this *Major Issues* report.

Abolishing the county elections administrator position in certain counties

SB 1750 by Bettencourt
Effective September 1, 2023

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SB 1750 abolishes the position of county elections administrator in counties with a population of more than 3.5 million. In such counties, all powers and duties of the county elections administrator must be transferred to the county tax assessor-collector and county clerk. The county tax assessor-collector must serve as the voter registrar, and the duties and functions of the county clerk that were performed by the administrator revert to the county clerk unless the commissioner's court transfers these duties and functions to the other official by written order.

Supporters said

By eliminating the appointed elections administrator position in Harris County, the only Texas county with a population greater than 3.5 million, and transferring these responsibilities to elected officials, SB 1750 would improve accountability for the county's elections. The bill would help address issues that have arisen in Harris County since the appointment of an elections administrator in 2020, such as uncounted or insufficient supply of ballots, which may have prevented eligible voters from voting. By allowing Harris County voters to choose their own elections administrators, the bill would give voters more say in how elections were run.

Additionally, the elected officials who would oversee elections under the bill have undergone their own elections and, as such, are more involved with the public and may have more election experience than appointed elections administrators. In addition, appointed elections administrators could be biased toward the aims of the elections commission and less directly accountable to the public. This bill would return the Harris County's election system to the way it was before an elections administrator was appointed when fewer issues occurred.

Critics said

By singling out one office in one county at the state level, SB 1750 could set a precedent for state overreach and could create inconsistency across Texas' election system. Harris County should be allowed to choose how its elections are administered. SB 1750 would eliminate the office without voter approval or the consent of the county officials who created it. Replacing the nonpartisan elections administrator role in Harris County with an elected county clerk and tax assessor-collector could reduce impartiality in election administration. Furthermore, the bill would not provide background or experience requirements for the officials administering elections, which could undermine the bill's purpose of minimizing errors in election procedures. Additionally, appointed elections administrators can be held accountable and removed at any time, while the process for removing elected officials outside of the election cycle is much more complex.

The bill would be unnecessary because the issues with the county's previous election were not found to have significantly impacted the outcome and these issues did not happen as the result of problems with the individual running the election. A series of changes have been imposed on Harris County elections in recent years, and continuing to alter these processes without allowing sufficient time to make the required changes could make it difficult for the county to administer upcoming elections. Additionally, having two offices coordinate elections, rather than just one, could complicate election processes, confuse voters, and lead to disenfranchisement.

Notes

The HRO digest of SB 1750 appeared in the May 22 *Daily Floor Report*.

Establishing administrative oversight of certain county elections offices

SB 1933 by Bettencourt
Effective September 1, 2023

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SB 1933 allows the Office of the Secretary of State to order administrative oversight of a county office administering elections or voter registration in counties with populations over 4 million if:

- an administrative election complaint is filed with the secretary of state by certain individuals involved with the relevant election;
- the secretary of state provides notice to the county election official with authority over election administration or voter registration; and
- the secretary of state, after conducting an investigation, has good cause to believe that a recurring pattern of problems with election administration or voter registration exists in the county.

A recurring pattern of problems includes any recurring:

- malfunction of voting system equipment that prevents a voter from casting a vote;
- carelessness or official misconduct in the distribution of elections supplies;
- errors in the tabulation of results that would have affected the outcome of an election;
- violations of provisions regarding time for delivering election records;
- discovery of properly executed voted ballots after the canvass of an election that were not counted; or
- failure to conduct maintenance activities on the lists of registered voters as required.

Notice of complaint. Within 30 days of receiving an administrative election complaint, the secretary of state is required to provide notice of the complaint to the applicable county election official, including the specific allegations against the official.

Within 30 days of receiving such notice, the county election official may respond to the secretary of state with any supporting documentation relating to the complaint or allegations. If the complaint concerns an election for which voting has begun but the final canvass has not been completed, the county election official must provide a response within 72 hours after receiving the complaint. The secretary of state must decide whether to implement administrative oversight within 30 days after the earliest of:

- the day a response by the county election official with authority over election administration or voter registration was received by the secretary of state;
- the last day the county election official with authority over election administration or voter registration could provide a response to the secretary of state; or
- the day the report on the findings of an investigation was provided to such an official.

Investigation of a complaint. The bill allows the secretary of state to direct personnel to investigate an administrative election complaint and to consider any response or supporting documentation provided by the county election official, if applicable. After completing an investigation, the secretary of state must provide a report on the investigation's findings to the official and to the individual who filed the complaint.

Administrative oversight. If the secretary of state implements administrative oversight, the secretary must provide written notice to the county election official and the county judge. The authority of administrative oversight granted to the secretary of state includes:

- requiring the approval and review by the secretary of any policies or procedures regarding the administration of elections issued by the county; and
- authorizing all appropriate personnel in the secretary of state's office to conduct in-person

observations of the county election office's activities.

While overseeing elections in a county, the secretary must submit a quarterly report on the activities of the oversight personnel to the members of the county election commission and the county attorney.

The secretary of state must conduct the administrative oversight of a county until the earlier of:

- December 31 of the even-numbered year following the first anniversary of the date the complaint was received; or
- the date on which the secretary of state determines that the recurring pattern of problems with election administration or voter registration is rectified.

Removal or termination of county election officials. At the conclusion of administrative oversight, if the recurring pattern of problems with election administration or voter registration is not rectified or continues to impede the free exercise of a citizen's voting rights in the county, the secretary of state may file a petition for the removal of the applicable county officer or of the county elections administrator in the county under investigation.

Randomized county audits. If the secretary of state completes a statutorily-required randomized audit of a county with a population of less than 300,000 before the end of the prescribed two-year period, the secretary may randomly select another county with a population of less than 300,000 to be audited. The bill establishes that these randomized audits only apply to elections conducted on uniform election dates.

If, before July 31 of the first odd-numbered year after the commencement of an audit, the audit findings demonstrate that a recurring pattern of problems with election administration or voter registration exists in the county and the problems impede the free exercise of a citizen's voting rights, the secretary of state is required to publicly release the audit's preliminary findings and recommend the county for administrative oversight. The secretary of state also may conduct an audit of other elections held in the county in the previous two years, as the secretary determines necessary.

Supporters said

SB 1933 would improve election integrity in Harris County by allowing for necessary administrative oversight of Harris County elections by the Office of the Secretary of State. This would help to restore trust in Harris County elections, which have recently experienced issues such as ballot paper shortages, missed reporting deadlines, and uncounted ballots that could lead to disenfranchisement. As free and fair elections are the foundation of our democracy, integrity must be reestablished in Harris County elections. By authorizing the secretary of state to implement administrative oversight of a county elections office when there is a recurring pattern of problems with election administration or voter registration, SB 1933 would improve accountability in the Harris County election process.

The bill would establish strict measures to ensure that the administrative oversight of county elections by the secretary of state was used only when appropriate and that government authority was prudently exercised. The bill also would limit whose complaints prompted an investigation and administrative oversight process to certain individuals who participated in a relevant election. The reporting requirements in the bill also would ensure that relevant stakeholders understood the implications associated with election procedures. By enforcing timely deadlines to address complaints, issues that could jeopardize the integrity of an election would be attended to during an ongoing election, which is the most critical time to respond.

Further, allowing the Office of the Secretary of State to conduct additional small county audits would help capitalize on time and improve elections across Texas.

Critics said

SB 1933 would set a dangerous precedent of targeting one county's elections and could discourage Harris County residents from voting. Although Harris County elections have had complications, studies have suggested that these issues did not significantly impact election outcomes, making administrative oversight unnecessary. The bill would allow the secretary of state to oversee county election offices if there was a "good cause," which is not clearly defined in the bill and could lead to state overreach. Furthermore, considering that the secretary of state's office helps election workers interpret election laws and answer questions, some election officials could be more hesitant to seek information for fear of being reprimanded.

Targeting Harris County elections could increase voters' distrust in elections and have a chilling effect on voter turnout. In a place like Harris County with a large

Black, Hispanic, and Asian American and Pacific Islander population, this could disenfranchise minority voters. Harris County should retain full control over its elections to maintain the autonomy of local communities, preserve the right to select its own election officials, and ensure the stability and consistency of elections, which are critical to our democracy.

Additionally, the bill would not provide a reliable standard of review for complaints filed against election administrators, which could lead to an overwhelming number of cases and potential abuse. Without explicit standards for the types of issues that could elicit election oversight to assist in reviewing complaints, the process outlined in the bill would not provide sufficient due process to the county and its election officials that received complaints. Furthermore, the bill would set tight deadlines for election workers to respond to complaints while an election was ongoing, which could result in mistakes and may not be realistic.

Notes

The HRO digest of SB 1933 originally appeared in the May 22 *Daily Floor Report*.

Several other bills were considered during the 88th Legislature related to election administration, including for elections in Harris County. **SB 1750** by Bettencourt, effective September 1, 2023, abolishes the county election administrator position in Harris County and transfers all assigned powers and duties to the county tax assessor-collector and county clerk. The HRO analysis of SB 1750 appeared in the May 20 *Daily Floor Report* and appears in this *Major Issues* report.

SB 1911 by Bettencourt, which died in the House Elections Committee, would have established a Class A misdemeanor for authorities who intentionally failed to provide or promptly resupply the required number of paper ballots requested by a polling place. SB 1911 did not receive an HRO analysis.

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*Finally approved

Legalizing sports wagering

HJR 102, HB 1942 by Leach

Died in the Senate

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HJR 102 would have amended the Texas Constitution to allow the Legislature to authorize and regulate the placing of wagers on sporting events. A law enacted under the resolution could have authorized the conduct of sports wagering only by:

- a sports team;
- a sports organization that held sanctioned annual professional golf tournaments in Texas as part of a national tour before January 1, 2023;
- a class 1 horse racetrack in operation on January 1, 2023;
- a racetrack that existed and operated before January 1, 2000, and annually hosted National Association for Stock Car Auto Racing Cup Series events for at least 20 years preceding May 1, 2023; or
- a designee of one of the above-mentioned entities.

A law enacted under the resolution would have had to dedicate at least 98 percent of net state tax revenue generated from sports betting to property tax relief.

HB 1942 would have established provisions in the Occupations Code and Penal Code on the authorization and regulation of sports wagering and related legal penalties. The bill would have added Ch. 2005 to the Occupations Code, which could have been cited as the Texas Sports and Entertainment Recovery Act. Under the bill, an interactive sports wagering operator or a service provider on an operator's behalf would have been authorized to conduct statewide interactive sports wagering. The bill would not have applied to fantasy sports contests or pari-mutuel wagering on horse racing or greyhound racing.

Texas Lottery Commission powers and duties. The bill would have established the powers and duties of the Texas Lottery Commission (TLC) in the administration of sports wagering in the state and would have required TLC to establish an interactive sports wagering program and issue permits to operate interactive sports wagering on sporting events.

The bill would have required TLC to adopt rules allowing operators and their service providers to use systems that offset loss or managed risk in the operation of sports wagering and requiring that adequate protections be maintained to ensure sufficient funds were available to pay all sports wagering players.

TLC could not have authorized a person to:

- operate or allow the operation of a place of public accommodation, a club, or a similar establishment in which computer terminals or similar devices were intended or made available for the primary use of accessing a sports wagering platform; or
- otherwise advertise to the general public that the place of public accommodation, club, or similar establishment was available to engage in sports wagering.

The bill also would have prohibited TLC from authorizing sports wagering involving youth sports.

The bill would have allowed TLC to suspend wagering on any competition as necessary to protect the integrity of a competition or its participants. A sports governing body could have submitted a written request to TLC to restrict, limit, or exclude a certain type, form, or category of sports wagering for the body's sporting events. TLC would have had to adopt and administer a monitoring program sufficient to protect the integrity of sports wagering and that provided for the sharing of suspicious activities with operators and regulators in other states.

The bill would have established requirements for TLC on the certification and provision of monthly and annual financial statements, and would have authorized TLC and the comptroller to conduct certain audits.

Voluntary exclusion program. The bill would have required TLC to establish, implement, and administer a voluntary exclusion program, including a statewide self-exclusion list that allowed an individual to register on the TLC public website for self-exclusion. TLC would have been required to regularly distribute the list to each interactive sports wagering operator. Each interactive

sports wagering operator also would have been required to provide information on the procedures for individuals to request to be added to the list and for operators to bar individuals on the list from further participation in sports wagering while the individual was on the list. The bill also would have established program requirements for individual participants and sports wagering permit holders.

Sports wagering permits. The bill would have established provisions for the granting of sports wagering permits to sports teams and certain other sports entities, including an interactive sports wagering permit and a service provider permit.

TLC would have been required to prescribe an application form for an interactive sports wagering permit and issue such a permit to an entity that submitted a completed application and paid a fee of $2 million. The bill would have allowed TLC to issue no more than one interactive sports wagering permit for each authorized sports entity. Each sports entity could have specified only one designee as an authorized sports entity and a designee could have been issued a permit only if the designee was based in the United States.

An applicant for a service provider permit would have had to submit an application to TLC and pay a fee of $25,000. The bill would have required TLC to conduct a background check on each service provider applicant. TLC would have been required to grant or deny a completed application by the 90th day after receiving the application. The bill would have required TLC to grant a permit to an applicant unless the commission reasonably believed that an applicant would not satisfy the duties of a service provider, was not of good character or integrity, knowingly failed to comply with the bill or TLC rules, was previously convicted of certain offenses, had prior activities or associations that were likely to pose a threat to the public interest or impede the regulation of sports wagering, had a similar license revoked by another state, or had defaulted on certain obligations or debt.

A permit would have expired on the third anniversary of the date of issuance. At least 60 days before the expiration of a permit, a permit holder could have renewed a permit by submitting a renewal application and paying a fee of $400,000 for an interactive sports wagering permit or $10,000 for a service provider permit. TLC could have denied a renewal application under certain circumstances.

Sports wagering operators. HB 1942 would have established provisions on sports wagering operators, including interactive accounts, third parties, and commercial agreements. The bill would have required an interactive sports wagering operator and its service provider to implement reasonable measures to:

- ensure that only individuals physically located in the state or otherwise authorized by TLC rule could place a wager through its platform;
- protect the confidential information of players;
- prevent wagering on prohibited events;
- prevent individuals from placing wagers as agents or proxies for others;
- allow individuals to restrict themselves from placing wagers through the platform under the voluntary exclusion program;
- establish procedures to detect and report to TLC suspicious or illegal wagering activity; and
- provide for the withholding or reporting of income tax of players.

The bill also would have created requirements for operators on records maintenance and retention, information sharing, and advertising.

An interactive sports wagering operator would have been responsible for verifying the identity of a player and ensuring the player was at least 21 years old. An operator could have suspended or terminated an account:

- if the player was determined to have provided false or misleading information or engaged in cheating or other unlawful conduct;
- if the player was barred from placing sports wagers in the state;
- if the player was or would otherwise become ineligible;
- if the operator determined it lacked sufficient information to verify the player's age and eligibility; or
- for any other reason at the operator's discretion, provided that the reason was not based on certain lawfully protected characteristics.

On termination for any reason other than providing false information, cheating, or unlawful conduct, an operator would have been required to provide the player sufficient time and access to withdraw funds from the account.

Subject to TLC approval, the bill would have allowed an operator to assign its interactive sports wagering operations to a third-party designee to manage and operate its sports wagering activities. The bill also would have

established requirements related to the use of official league data in certain circumstances.

A sports governing body could have entered into a commercial agreement with an operator under which the governing body could share in the amounts wagered or revenue derived from sports wagering on its events without obtaining a permit or other approval from TLC to lawfully accept such amounts or revenues.

Competition integrity and reporting. HB 1942 would have established provisions on the integrity of competitions. TLC and operators would have been required to cooperate with investigations conducted by sports governing bodies or law enforcement agencies. An operator would have been required to promptly report to TLC and the relevant sports governing body any information on:

- relevant criminal or disciplinary proceedings commenced against the operator;
- certain abnormal wagering activity or patterns;
- any potential breach of the relevant governing body's internal rules and codes of conduct pertaining to sports wagering;
- any other conduct that corrupted a wagering outcome of a sporting event for purposes of financial gain; and
- suspicious or illegal wagering activities.

The bill also would have included confidentiality requirements for certain information.

Wagering revenue tax. The bill would have imposed a monthly 15 percent tax on the adjusted gross wagering revenue of an interactive sports wagering operator. The bill also would have established a calculation for computing adjusted gross wagering revenue. Operators could have excluded wagers placed using free bets or promotional credits from adjusted gross wagering revenue if the operator had held an interactive sports wagering permit for less than a year. The bill also would have included requirements for tax reporting and payment.

The comptroller would have been required to deposit the net revenue from the collected taxes and excess fee revenue as follows: 2 percent to the Problem Gambling and Addiction Grant Fund and the remainder to the general revenue fund to be appropriated to the Texas Education Agency for use in providing property tax relief through the reduction of the state compression percentage. The bill would have exempted a sports wagering operator from all excise taxes, license taxes, permit taxes, privilege taxes, amusement taxes, and occupation taxes imposed by the state or a political subdivision.

Problem Gambling and Addiction Grant Fund. The bill would have established the Problem Gambling and Addiction Grant Fund as an account in the general revenue fund. TLC would have been required to administer a grant program to provide assistance for the direct treatment of persons diagnosed as suffering from pathological gambling and other addictive behaviors and to provide funding for research on the impact of gambling on Texas residents.

Criminal and civil penalties. HB 1942 would have established certain criminal penalties, including for knowingly offering or engaging in sports wagering in violation of the bill, which would have been a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000). If TLC determined that a permit holder intentionally violated any material provision of the bill or a TLC rule, TLC could have, after providing at least 15 days' notice and hearing, suspended or revoked the holder's permit and imposed a penalty of up to $10,000.

Federal and state compliance. All sports wagering authorized by the bill would have had to have been initiated, received, and otherwise placed within the state unless otherwise authorized by TLC rule and adopted in accordance with applicable federal and state laws. Consistent with current federal law, the intermediate routing of electronic data relating to authorized online sports wagering could not have determined the location in which wagers were initiated, received, or otherwise placed.

Supporters said

HJR 102 and HB 1942 would protect personal liberty, benefit the Texas economy, and provide transparency and accountability for providers and consumers by establishing a robust regulatory framework for legal online sports betting. Texans should be trusted with the opportunity to decide for themselves whether or not sports betting should be legal in the state. Research has shown that Texans illegally place billions of dollars in wagers every year through applications by illegal offshore providers, with no legal recourse for fraud or misuse of personal data. HJR 102 and HB 1942 would not allow any brick-and-mortar gaming locations and would not significantly increase the amount of gambling in the state. HB 1942 would protect Texans from being criminalized for using their own money as they see fit. Since the Supreme Court allowed states to authorize sports wagering in 2018, many states have legalized the practice and more are likely to do so in the

near future. Under the bill, sports teams would be the main entities to act as or designate others to act as sports wagering operators. Texas-based sports teams are currently competitively disadvantaged by their inability to profit from sports wagering, and fans in the state are excluded from legally betting on their favorite Texas teams.

Allowing the state to grant sports wagering licenses to Texas-based sports franchises would bring significant economic benefits by creating jobs and a new stream of tax revenue for the state. Under HB 1942, a portion of this revenue would be dedicated to providing education to prevent and combat problem gaming, and Texans who struggle with problem gaming would be able to protect themselves against addictive behavior by participating in a self-exclusion program. The bill also would include safeguards to exclude minors from gaming applications and would not allow advertisements for sports betting to target minors.

Under federal law, the Kickapoo Traditional Tribe of Texas could petition the state for a compact to operate mobile sports betting on its lands. However, if the tribe wished to operate beyond their tribal lands they would have to do so under state regulation and taxation as provided for in HB 1942, not only under federal gambling laws.

Critics said

HJR 102 and HB 1942's legalization of online sports betting could harm public health by promoting gambling addiction and associated social ills. There is evidence of an association between gambling and crime, domestic violence, loss of family savings, substance abuse, and debt. Although some have claimed that legalization would simply regulate gambling that is already taking place, the practice would become more easily accessible if legalized and could encourage more people to participate. The business model for gambling depends on addiction, as gambling addicts contribute most to the industry's profits. In states that have legalized online sports betting, frequent advertisements have normalized gambling, including among minors. Any expansion of gambling would promote addiction and disproportionately harm those who can least afford it. Allowing gamblers to fund their gaming application accounts with credit cards could encourage them to gamble with money they did not have and fall into serious debt. Any revenue that could be gained by the state is not worth the negative social effects of legalized online sports betting.

Additionally, a vote to amend the State Constitution to allow sports betting would be likely to be swayed by heaving spending from the gambling industry, as has happened in other states.

Other critics said

HJR 102 and HB 1942 would unfairly exclude the Kickapoo Traditional Tribe of Texas from raising revenue through online sports betting because the bills lack the specific language necessary under the federal Indian Gaming Regulation Act. Allowing other entities to conduct online sports gaming without explicitly including the Kickapoo Tribe could cause the tribe to lose gaming customers and harm the tribe's ability to raise the necessary revenue to care for its members.

Notes

The HRO digests of HJR 102 and HB 1942 appeared in the May 10 *Daily Floor Report*.

Another constitutional amendment related to gambling in Texas, **HJR 155** by Geren, and its enabling legislation, **HB 2843** by Kuempel, would have legalized and regulated casino gambling and sports wagering at certain destination resorts. An analysis of these bills is also included in this section of the *Major Issues* report.

Legalizing certain resort casinos, establishing the Texas Gaming Commission

HJR 155 by Geren, HB 2843 by Kuempel
Died in the House

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HJR 155 would have amended the Texas Constitution to authorize casino gaming under casino licenses for a limited number of destination resorts in the following metropolitan statistical areas:

- two in Dallas-Fort Worth-Arlington;
- two in Houston-The Woodlands-Sugar Land;
- one in San Antonio-New Braunfels;
- one in Corpus Christi;
- one in McAllen-Edinburg-Mission or Brownsville-Harlingen; and
- one in Austin-Round Rock-Georgetown.

The resolution also would have authorized one casino gaming resort at a location for which the Texas Racing Association had issued or was considering issuing a racetrack license and at which the Texas Gaming Commission authorized sports wagering or casino gaming.

The Legislature would have been required to authorize sports wagering only in a place and manner prescribed by general law, regulate sports wagering by general law, and direct the Texas Gaming Commission to adopt rules regulating sports wagering consistent with general law.

The Legislature also would have had to establish the Texas Gaming Commission as a state agency with broad authority to regulate casino gambling and sports wagering. The commission would have had to issue a casino license to each initial qualified applicant, who would have been required to:

- be of good moral character, be honest, and have integrity;
- demonstrate that the issuance of the license would not be detrimental to public interest or the casino gaming industry;
- satisfy qualifications and any other requirements under general law;
- demonstrate the financial ability to complete the development of and operate the applicable destination resort;
- have adequate experience in resort development, management, and casino gaming operations; and
- provide a detailed estimate of the applicant's total new development investment in the resort.

For each specified metropolitan statistical area other than Brownsville-Harlingen or Austin-Round Rock-Georgetown, an initial qualified applicant for a casino license would have had to be a racetrack association that, as of January 1, 2022, held a license to conduct racing in the areas specified by the bill or have been a person designated by the racetrack association to apply for and hold a casino license. For each metropolitan area, HJR 155 would have specified a casino license application fee and the minimum investment amount an applicant would have been required to commit for developing a resort.

The Legislature would have had to regulate casino gaming and sports wagering by prescribing:

- additional requirements for casino licenses;
- restrictions on the transfer of casino licenses;
- definitions of terms necessary or useful to implement the amendment;
- prohibitions on issuance or possession of a casino license by any person who also held a gaming license in mainland China, Russia, Iran, or North Korea;
- qualifications for the issuance of new casino licenses to persons who were not initial qualified applicants or did not satisfy an applicable requirement; and
- restrictions and penalties for unlawful casino gaming and sports wagering.

Public money or facilities developed or built with public assistance or tax incentives of any kind could not have been used for the development or operation of a destination resort. The Legislature would have been required to prescribe measures to ensure that a casino license applicant was financially capable of satisfying minimum investment requirements and that a casino license holder satisfied these requirements. A person could not have had an ownership interest in more than two casino license holders.

The Legislature would have had to direct the Texas Gaming Commission to adopt rules ensuring that a person who held a casino license and a class 1 racetrack horse racing license maintained a number of live races at least equivalent to the number held in 2022. The Legislature also would have been required to impose a 15 percent tax on gross casino gaming revenue on each casino license holder and a tax as provided by general law on gross sports wagering revenue. The state, a state agency, or a political subdivision could not have imposed any other tax on this revenue or a license holder's operations, except for taxes or fees generally applicable to a business in the state.

The Legislature would have been required to allocate 80 percent of the tax revenue from the gross casino gaming revenue towards increased public school teacher salaries and cost of living adjustments for the Teacher Retirement System of Texas. A portion of this revenue also would have had to have been allocated to public safety programs. Additionally, the Legislature would have been required to allocate a portion of the accrued revenue to be used as horse racing purse money for the public purpose of promoting the horse racing industry.

The resolution would have provided for the governor, at the request of any of the three federally recognized Indian tribes with Indian lands in the state, to negotiate a Tribal-State compact with the tribe to authorize Class III gaming on Indian lands as prescribed by the Indian Gaming Regulatory Act (IGRA). If either the Alabama-Coushatta Tribe of Texas or Ysleta del Sur Pueblo was not authorized to offer gaming under the IGRA at the time the amendment took effect, gaming by those tribes would have been governed by the Ysleta Del sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act.

HB 2843 would have established the Texas Gaming Commission and authorized and regulated licensed casino gaming and sports wagering at destination resorts.

Texas Gaming Commission. HB 2843 would have established The Texas Gaming Commission with five members appointed by the governor with the advice and consent of the Senate, serving staggered six-year terms, with one commission member designated by the governor as the presiding officer. The bill would have established qualifications for commission membership which, among other requirements, would have excluded from eligibility certain lobbyists and individuals affiliated with gaming trade associations.

The commission would have been required to appoint an executive director. The required experience of the executive director as well the removal, training, and compensation of commission members would have been provided for by the bill. The commission would have been required to meet at least 12 times per year and commission transactions would have been subject to audit by the state auditor.

Commission powers and duties. HB 2843 would have established that the commission had broad authority and would have been required to exercise strict control and close supervision over all activities under its regulatory jurisdiction. The commission would have had to ensure that all casino games, other casino gaming activities, sports wagering, and other gambling subject to the oversight or regulatory authority of the commission were conducted fairly and in compliance with the law. The bill would have established provisions authorizing inspections, examinations, and audits of certain applicants or license holders as well as requirements for license holders to furnish and maintain certain records. The executive director could have investigated suspected criminal violations of laws related to casino gaming, sports betting, or gambling regulated by the commission.

The commission would have had to adopt rules necessary or desirable for the public interest that addressed topics including license applications, license criteria, hearings, fees, equipment approval procedures, confidential information, financial reporting, and audit requirements. The bill would have provided for the creation of executive positions and the employment of directors in the areas of audits, investigations, and enforcement.

The bill would have required the commission to create an office of hearing examiners that was independent of the executive director and under exclusive control of the commission to hold hearings and report on matters related to the commission's administration of laws on gaming, sports wagering, or gambling.

The commission could not have adopted rules restricting advertising or competitive bidding by persons regulated by the commission except to prohibit false, misleading, or deceptive practices.

The commission also would have been required to:

- contract with at least one independent testing laboratory to scientifically test and technically evaluate casino games, gaming devices, and associated equipment for compliance with applicable law;
- adopt rules necessary to comply with requirements related to ineligibility for licensure due to a criminal conviction;
- develop and implement a policy to encourage the use of negotiated rulemaking and alternative dispute resolution procedures;
- maintain a system to promptly and efficiently act on complaints and adopt rules for complaint investigations; and
- develop and implement policies for public participation.

The executive director would have been authorized to contract with a third party to perform a function, activity, or service in connection with the operation of casino gaming or sports wagering, other than investigative services. The executive director also would have been required to maintain a department of security and could have employed security officers or investigators and commissioned them as peace officers.

A violation or alleged violation of applicable law by the commission, its employees, or a person regulated by the commission could have been investigated by the attorney general, the Travis County district attorney, or certain attorneys for the county in which the violation or alleged violation occurred.

The bill would have established that by participating as a player, a person agreed to abide by the commission's and the license holder's rules and instructions and agreed that the determination of whether the player was a valid winner was subject to those rules and instructions, any validations tests established by the commission, and other applicable limitations and provisions.

Casino license. HB 2843 would have established that casino gambling and sports wagering could be lawfully conducted in a casino operating under a casino license. The commission would have been required to issue casino licenses as required and limited by the Texas Constitution and the bill.

A casino license application would have been required to contain information the commission found necessary to determine the suitability and eligibility of an applicant, the eligibility of the proposed location, and the economic impact of the overall project.

In addition to any other information the commission required, the bill would have specified certain other evidence of the applicant's suitability and the feasibility of the proposed destination resort to be included in an application.

An applicant could have applied for up to two casino licenses and would have had to submit a separate application for each. The bill would have specified the factors that the commission would have had to consider in determining an applicant's suitability for a license. The bill also would have provided for the commission to issue a casino license to a federally recognized Indian tribe.

An applicant for or holder of a casino license could not have received or held a license if the person or an officer or director:

- had been convicted of a felony in the past 20 years;
- had ever knowingly submitted a casino license application that contained false information;
- served as a principal manager for an applicant or license holder described above;
- retained or employed another person who had knowingly submitted false information in the manner above;
- held a manufacturer license or casino service license;
- was a commission member; or
- was a member of the judiciary or an elected official of the state.

The commission would have been required to approve or deny a casino license application within 180 days of the application's filing.

The commission could have denied an application or suspended or revoked a casino license and would have been required to conduct an investigation and a hearing if it had reasonable grounds to believe the an applicant or license holder was unsuitable. If a license holder had failed to begin construction of a casino or had failed to begin

casino gaming or sports wagering according to the timeline prescribed by the bill, the commission could have required forfeiture of the license.

The bill would have established qualifications required to hold an equity interest in an applicant or license holder and would have provided for the transferability and ownership of such an equity interest.

The commission would have been required to ensure that a casino license holder that was also a racetrack association holding a class 1 racetrack license continued conducting horse races and kept casino operations and financial records separate from racing operations and records.

A casino license issued under the bill would have expired 50 years after the date of issuance and could have been renewed for one or more 50-year periods. A destination resort at which casino gaming was authorized would have been subject to any applicable local government zoning and land use regulations in place on January 1, 2023.

Other licenses. HB 2843 would have established the following licenses related to casino gambling under the commission:

- operator license, required to provide operator services;
- occupational license, required to be employed as a gaming employee;
- manufacturer's license, required to engage in segments of the slot machine manufacturing industry as identified by the commission; and
- casino service license, required to provide certain gaming-related services, equipment, and supplies.

In considering the suitability of a company applying for one of these licenses, the commission would have had to consider the suitability of each principal manager and each holder of more than 5 percent of the equity interest of the company to individually hold the license. A person could not have been found suitable to hold one of these licenses if that person would be unsuitable to hold a casino license, except that an applicant who had been convicted of a felony could have been found suitable if adequately rehabilitated. The commission could have denied an application for, suspended, limited, or revoked a license for any reasonable cause, and would have been required to conduct investigations and hearings to determine unsuitability to hold a license.

The bill would have specified requirements for each license type application, including application fees, which would have been deposited in the Texas Casino Gaming Fund and used for commission operations. Licenses would have expired after one year, and renewal fees would have been the same as for the initial application.

Licensee reporting requirements. A casino or operator license holder would have been required to report to the commission any litigation related to casino gaming or sports wagering operations. A casino or operator license holder also would have had to submit to the commission a confidential gaming employee report for the casino operated by the owner or operator, including employee names, titles, dates of birth, and social security numbers. A person who held a license under the bill would have been required to immediately report a violation or suspected violation of the bill or a commission rule.

Texas Casino Gaming Fund. HB 2843 would have established the Texas Casino Gaming Fund as a special fund in the state treasury. All application and investigation fees collected by the Texas Gaming Commission or on its behalf related to casino gaming would have been required to be deposited in the fund. The fund could have been used only for commission operations and administration of applicable law. Any excess amount could have been transferred to the general revenue fund as authorized by the Legislature. Commission operations and administration also would have been supported by a portion of the taxes and fees imposed by the bill. The bill would have imposed on each casino license holder a tax of 15 percent of gross casino gaming revenue. Of the revenue from this tax:

- the comptroller would have had to deposit 2 percent to the escrow account administered by the Texas Racing Commission to be used for horse racing purses;
- 3 percent would have been allocated to the Texas Casino Gaming Fund to support the operation of the Gaming commission;
- one-half of 1 percent would have been allocated to the general revenue fund and could have been appropriated only to fund a compulsive gambling program;
- $1 million could have been appropriated in each fiscal biennium to the Department of Public Safety to provide grants to prosecuting attorneys for the investigation and prosecution of offenses related to the possession of gambling devices;
- 10 percent could have been appropriated only to fund public safety programs; and

- 80 percent could have been appropriated only to fund increases in public school teacher salaries and cost of living adjustments for Teacher Retirement System members.

All remaining revenue would have been allocated to the general revenue fund. The bill also would have imposed a sports wagering tax on each license holder of 10 percent of gross sports wagering revenue.

Regulation of gaming operations. HB 2843 would have required the Texas Gaming Commission to adopt rules applicable to the operation of casinos for the protection of the health, safety, morals, and general welfare of this state and for the reputation of the state's casino gaming and sports wagering industry. Casinos could have operated 24 hours a day, seven days a week, but a license holder would have been authorized to elect other hours of operation. A person under 21 years of age could not have played, been allowed to play, placed wagers on, or collected winnings from any casino gaming or sports wagering or have been employed as a gaming employee.

A casino license holder would have been required to keep books and records in a manner that clearly showed the total amount of gross casino gaming revenue, gross sports wagering revenue, and other revenues. Additionally, a license holder would have been required to file a report of each change of corporate officers and directors with the commission and report in writing to the executive director a change of key employees. The commission could have required a company to provide a copy of its federal income tax return within 30 days of filing. The commission would have been required to provide for the establishment of a list of persons to be excluded or ejected from a casino, including a person whose presence posed a threat to the interests of the state, the industry, or both.

A casino license holder would have been required to adopt an internal control system that met minimum standards adopted by the commission to safeguard its assets and revenue and provide reliable records, accounts, and reports of transactions, operations, and events.

A credit instrument evidencing a gaming transaction could have been enforced by legal process. A license holder could not have accepted an incomplete credit instrument unless it was signed by a patron and stated the amount of the debt. The license holder could have completed the instrument as necessary for payment. Gambling debts not evidenced by a credit instrument would have been void and unenforceable and would not have given rise to any administrative or civil cause of action. The bill would have provided for the executive director to resolve a patron's claim for a payment not evidenced by a credit instrument.

A casino license holder or their officer, employee, or agent would have been authorized to question and detain any person suspected of violating applicable law. These individuals would not have been criminally or civilly liable for these actions or for reporting the person to the executive director or law enforcement if a notice was displayed in the license holder's establishment as prescribed by the bill. The casino license holder or operator license holder would have been required to record all known potential criminal violations related to casino gaming or sports wagering in the casino. A license holder also would have been required to keep a database of slot machine events as defined by commission rules. A license holder would have had to provide for the security of slot machines as specified by the bill with regard to closed-circuit television monitoring, security and floor plans, and security personnel.

The bill would have authorized the commission or its representatives, after displaying appropriate identification, to enter and inspect casino premises and inspect and copy relevant records. The commission also could have disabled slot machines or appointed a supervisor to manage and operate a casino under certain circumstances.

Enforcement. HB 2843 would have provided procedures and requirements for the enforcement of applicable law and commission rules, including for:

- investigations by the executive director;
- the confidentiality of privileged information submitted by a license holder, and release of confidential information under certain conditions;
- emergency orders for suspending, limiting, or conditioning a license;
- the suspension or revocation of a license;
- certain hearings for applicants and license holders;
- judicial review of final commission decisions; and
- state liability limitations and a waiver of the state's sovereign immunity with regard to disputes arising from a gaming agreement with a federally recognized Indian tribe.

Penalties and offenses. HB 2843 would have established that a person who failed to timely pay a fee or tax would have had to pay a penalty of at least $50 or 25 percent of the amount due, whichever was greater. The penalty could not have exceeded $1,000 if the fee or tax was less than 10 days late, and could not have exceeded $5,000 under any circumstances. The bill also would

have established certain criminal offenses related to casino gaming and sports wagering, including fraud, knowingly cheating at a gambling game, and intentionally allowing a person under 21 to play a gambling game or engage in sports betting.

Grant program. HB 2843 would have established the Problem Gambling and Addiction Grant Fund as an account in the general revenue fund. Grants from money in the fund could have been used only to provide treatment for problem gambling, gambling addiction, alcoholism, drug abuse, and other addictive behaviors, and to provide funding for research related to the impact of gambling on state residents.

Tribal casinos and gaming agreements. HB 2843 would have authorized the Ysleta del Sur Pueblo and Alabama-Choushatta Indian Tribes to engage on Indian lands in any gaming activity not prohibited in the state. A federally recognized Indian tribe with lands held in trust by the United States on January 1, 1998 but that was not authorized to conduct gaming under the Indian Gaming Regulatory Act could have conducted the same gaming activities as any license holder under the bill and operated one tribal casino on certain Indian lands. A tribe operating a casino would have been required to enact gaming regulations substantially similar to those of HB 2843. If Congress applied the Indian Gaming Regulatory Act to the Ysleta del Sur Pueblo and Alabama-Choushatta Tribes, HB 2843 would have required the governor, upon request from a tribe, to execute a gaming agreement consistent with federal law no later than 180 days after the request was made. The bill would have provided a required form model for such an agreement, which would have authorized a tribe to conduct class III gaming on eligible Indian lands.

Other provisions. HB 2843 would have established that the Texas Gaming Commission was authorized to obtain criminal history record information from the Department of Public Safety that related to casino license holders, applicants, employees, and other specified persons associated with casino gaming or sports wagering in the state. The bill also would have established that it was a defense to prosecution for certain offenses that the actor reasonably believed the conduct was permitted under the bill. The bill would have prohibited political subdivisions of the state from imposing certain taxes and fees related to casino gaming and sports wagering.

Oversight committee. HB 2843 would have created the Texas Gaming Commission Legislative Oversight Committee to facilitate the creation of the Texas Gaming Commission. The committee would have been composed of seven members, including members of the Senate, members of the House, and members of the public. The executive director of the commission would have served as an ex officio member of the committee. The committee would have, among other duties:

- facilitated the assignment of powers, duties, functions, programs, and activities of the commission;
- adopted an initial training program for the commission's initial appointees;
- advised the executive director and members of the Texas Gaming Commission, with assistance from the commission; and
- reviewed specific recommendations for legislation proposed by the commission or other agencies.

Supporters said

HJR 155 and HB 2843 would benefit the Texas economy and provide much-needed regulation for gambling in the state by authorizing a limited number of licenses for destination resort casinos and establishing a new state agency, the Texas Gaming Commission. Texans already spend billions gambling legally in other states. By allowing casino gaming and sports wagering, HJR 155 and HB 2843 would enable Texas to keep those dollars in the state economy while also attracting out-of-state leisure tourism, conferences, and entertainment events. Furthermore, the high minimum investment thresholds required by the bills would help ensure that the destination resorts were of superior quality, helping the state's hospitality industry to compete on a global scale. Developing these casinos would provide tens of thousands of construction jobs, with thousands of permanent jobs created once the resorts were completed. By granting casino licenses to racetracks, the bills also would help revitalize the horse racing and breeding industry in Texas. Additionally, by taxing gaming profits, these measures would bring substantial revenue to the state, most of which would be used to provide much needed raises and cost-of-living adjustments for public school teachers.

HJR 155 and HB 2843 would establish a robust regulatory structure for gaming in Texas. This would include a the creation of a new state agency to provide oversight and enforce a rigorous license application vetting process that would determine whether potential casino operators were ethically and financially sound. The bills also would provide new resources to combat illegal gambling and its negative social effects in the state, and would allow only a strongly limited and highly regulated

gaming presence in the state. In addition to the resources from gaming revenue that the bills would specifically dedicate towards enhancing public safety, such strict regulatory standards would prevent potential exploitation of the resorts by organized crime. The limited number of licenses granted to racetrack associations also would help ensure that the casinos were run by capable companies familiar with the gaming business, and the bills would allow casinos only in metropolitan areas that would be able to sustain large destination resorts.

Critics said

HJR 155 and HB 2843 would expand gambling in Texas, which would likely increase gambling addiction and the associated economic and social costs. Gaming profits often come from problem gambling, and any expansion of gambling in the state could promote addiction and disproportionately harm those who can least afford it. There is evidence of an association between gambling and crime, domestic violence, loss of family savings, substance abuse, and debt. Casinos in particular also have been linked to organized crime, including human trafficking and drugs. Additionally, legalizing casinos would impose the burden of the regulatory costs and social services needed to address problem gambling on Texas taxpayers. While some have argued that the bills would only allow a limited gambling footprint in Texas, legalizing casinos would likely lead to more lobbying power for the gaming industry and the eventual expansion of casino gambling across the state.

Tying casino licenses to racetrack associations is arbitrary, and authorizing a limited number of casino licenses would go against free market principles by restricting competition and enacting a form of corporate welfare for the few large companies that would qualify under the bill. It is unclear whether the application fees required by the bill would provide compensation proportionate to the profits that would be gained by the casinos.

Other critics said

HJR 155 and HB 2853 could cause the Kickapoo Traditional Tribe of Texas to lose most of the customers who frequent its casino in Eagle Pass. A majority of these customers come to the casino from San Antonio, and the tribe would not be able to compete with a closer resort casino in the San Antonio metropolitan area. The bills should allow the Kickapoo to operate its own destination resort outside of tribal lands closer to metropolitan areas so the tribe can maintain sufficient gaming revenue to supports its members. The bills should directly include the Kickapoo in a tribal gaming compact rather than requiring them to negotiate with the governor.

The bills would not do enough to protect and revitalize the horse racing and breeding industry in Texas. While the bills would set aside a portion of casino revenue for horse race purses, they also should ensure that the funds went towards Texas-bred horses. The bills should include more protections against the decoupling of casino gaming from racetracks.

Notes

The HRO digests of HJR 155 and HB 2843 appeared in the May 10 *Daily Floor Report*.

An analysis of **HJR 102** and **HB 1942** by Leach, which would have legalized sports wagering in Texas, also can be found in this *Major Issues* report.

Creating the Broadband Infrastructure Fund

HB 9, HJR 125 by Ashby
Effective January 1, 2024

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HB 9 establishes the broadband infrastructure fund as a special fund in the state treasury outside the general revenue fund. The fund may be used only for:

- a purpose established under provisions for the Broadband Development Office;
- providing funding for 9-1-1 and next-generation 9-1-1 services;
- supporting the deployment of next-generation 9-1-1 services;
- supporting the Texas Broadband Pole Replacement Program;
- providing matching funds for federal money through the Broadband Equity, Access, and Deployment (BEAD) Program;
- expanding access to broadband service in economically distressed communities; and
- administering and enforcing the bill.

For the purposes of providing matching funds for the BEAD program, the comptroller must consider an applicant's potential contribution toward matching funds and may only provide them if necessary for the economic feasibility of a project.

The bill also establishes provisions for the holding and investment of the fund by The Texas Treasury Safekeeping Trust Company.

HB 9 directs the comptroller to make one-time transfers from the broadband infrastructure fund of:

- $155.2 million to the next generation 9-1-1 service fund; and
- $75 million to the broadband pole replacement fund.

HJR 125 amends the Texas Constitution to create the Broadband Infrastructure Fund as a special fund in the state treasury outside the general revenue fund. Money in the fund is administered by the comptroller and may be used only for the expansion of access to and the adoption of broadband and telecommunications services, including the development and operation of infrastructure. The comptroller may transfer money from the fund to another fund, and transferred money may be used without further appropriation only for the expansion of access to and adoption of broadband and telecommunications services.

The fund expires on September 1, 2035, unless extended for another ten years by a joint resolution approved by a two-thirds majority in each house of the Legislature. The comptroller must transfer any remaining fund balance to the general revenue fund immediately before the fund expires. The proposed constitutional amendment was approved by voters on November 7, 2023.

Supporters said

HJR 125 and HB 9 would increase broadband access and affordability across the state by authorizing major investments in broadband and telecommunications infrastructure in coordination with federal funding programs. Millions of Texans currently lack broadband internet, limiting their access to online education, telehealth, and remote employment opportunities. This lack of access disproportionately affects rural communities, people of color, and low-income families. The Broadband Infrastructure Fund would provide resources to help close this digital divide, which in turn would improve many Texans' quality of life. The fund also would spur economic growth by enhancing opportunities for increased personal incomes through online education and remote work and by creating jobs related to broadband infrastructure.

While substantial federal funds for broadband expansion are available, many communities that need reliable, affordable internet may struggle to meet federal fund matching requirements or to attract private investment. Using state resources to provide matching funds would ensure that Texas communities received the maximum benefit from these funding opportunities.

By allocating money from the fund to support 9-1-1 services, including the deployment of next-generation 9-1-1 technology, the bill would help first responders provide more reliable 9-1-1 services and cover increased costs related to technological changes and population growth.

The state should support the use of all available tools, including both fiber and wireless technology, to close the digital divide in Texas. Each technology has advantages and disadvantages, but efforts to support the growth of broadband should retain the flexibility to determine which technologies are feasible for different areas of the state. The bill's technology-neutral approach would promote competition and maximize efficiency.

While some have suggested that the bills should include a specific provision on labor standards, this is unnecessary because federal regulations already require states to include fair labor practices in their broadband development programs. The federal Broadband Equity, Access, and Deployment (BEAD) program also requires states to develop a plan aimed at achieving a diverse and sufficiently skilled workforce to build and maintain broadband infrastructure. Similarly, the fund would provide supporting grants for federal programs that will ensure accountability by requiring grantees to report on broadband project milestones, including areas and number of customers served, so additional state reporting requirements would be unnecessary. The state's fund should maintain flexibility and avoid imposing any statutory limitations beyond federal requirements.

Critics said

HJR 125 and HB 9 should require the Broadband Infrastructure Fund to prioritize the development of fiber optic broadband infrastructure, which would be faster, safer, more durable, and more reliable than wireless broadband.

To ensure that broadband investment in Texas was successfully implemented by a skilled and properly trained workforce, HJR 125 or HB 9 should incorporate federally-recommended labor standards for broadband projects that call for a directly employed, rather than subcontracted, workforce, since subcontracting could decrease accountability and quality of service. The state also should include fair labor standards, including robust in-house training requirements, in the criteria for awarding money from the fund.

HB 9 also should include requirements for grantees to provide reports to the Legislature with information about the extent of services provided, including areas and number of customers served and internet speeds provided, to ensure accountability for the state's financial investments.

Other critics said

Using taxpayer money to fund broadband expansion would go beyond the proper scope of state government.

Notes

The HRO analyses of HB 9 and HJR 125 appeared in the April 26 *Daily Floor Report.*

Continuing PUC, creating reliability requirements

HB 1500 by Holland
Effective September 1, 2023

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HB 1500 continues the Public Utility Commission of Texas (PUC) and the Office of Public Utility Counsel (OPUC) until September 1, 2029. In addition, the bill establishes requirements for dispatchable electric generation reliability and certain reliability and ancillary services programs, revises provisions related to PUC oversight of ERCOT, allows PUC to set certain requirements for renewable energy facilities, and requires ERCOT to maintain an accreditation and banking system related to renewable energy credits, among other provisions.

Reliability and outages. HB 1500 adds requirements for PUC regarding generation reliability, certain reliability programs, and ancillary services programs. Under the bill, owners or operators of electric generation facilities other than a battery energy storage facility must demonstrate the facility's ability to operate when called upon for dispatch at or above seasonal average generation capability during the times of highest reliability risk due to low operation reserves. The owner or operator must be allowed to meet these requirements by supplementing or contracting with on-site or off-site resources, including battery energy storage resources.

The bill establishes that PUC must require ERCOT to enforce these standards by imposing financial penalties on facilities that fail to comply and by providing financial incentives to facilities exceeding the requirements. ERCOT may not impose penalties in cases of resource unavailability due to planned outages on resources already subject to performance obligations during highest reliability risk hours or during hours outside a baseline established by PUC. The bill also creates and establishes guidelines for the Grid Reliability Legislative Oversight Committee to oversee PUC's implementation of legislation related to the regulation of the Texas electricity market.

HB 1500 establishes requirements for PUC reliability programs that involve retail customers and load-serving entities, including that PUC is prohibited from requiring retail customers and load-serving entities to purchase credits designed to support a required reserve margin or other reliability requirement unless PUC ensures certain conditions are met. This includes a condition that the net cost to the ERCOT market for the credits does not exceed $1 billion annually, less the cost of any bridge solutions designed to support capacity or reliability requirements. This limit may be adjusted proportionally according to the highest net peak demand year-over-year and for inflation. Credits may only be available for dispatchable generation and, when adopting and implementing such a reliability program, PUC and ERCOT must consider recommendations made by a technical advisory committee established under ERCOT bylaws. The bill also specifies that PUC must prohibit a generator receiving credits through the program from decommissioning or removing from service the dispatchable electric generating unit for which the generator is receiving credits, except under certain conditions.

Prior to adopting a reliability program, PUC must require ERCOT and the wholesale electric monitor to complete and submit to PUC and the Legislature an updated assessment on the cost to and effects of the proposed program on the ERCOT market. If a program is adopted, the wholesale electric market monitor is required to biennially evaluate the incremental reliability benefits compared to the costs of the program for consumers as well as costs in the energy and ancillary services market. The monitor must then report the results of each evaluation to the Legislature. The bill also requires that the monitor provide independent analysis of any material changes proposed to the wholesale market, prohibits PUC from restricting the monitor from appearing or speaking before the Legislature, and prohibits ERCOT from substantially modifying the monitor's contract unless approved by the majority of commissioners.

HB 1500 requires ERCOT to develop and implement an ancillary services program to provide dispatchable reliability reserve services to account for market uncertainty. ERCOT also must evaluate, with input from the technical advisory committee, whether allocating

the costs of ancillary and reliability services using the methodology described in the bill will result in net savings to consumers compared to allocating all such costs to load to ensure reliability.

PUC is required by the bill to direct each transmission and distribution utility to perform a circuit segmentation study to examine whether and how systems may be segmented and sectionalized to manage and rotate outages. Requirements for the study are specified in the bill.

ERCOT oversight. HB 1500 prohibits PUC from verbally directing ERCOT to take an official action, except in certain emergencies. In the case of such an emergency, PUC must provide written documentation of the directive no later than 72 hours after the emergency ends. Otherwise, PUC may direct ERCOT to take an official action only through a contested case, rulemaking, a memorandum, or a written order. PUC must use a contested case or rulemaking process to direct ERCOT to take an action creating or increasing a cost or fee, or imposing significant operational obligations on an entity.

The bill authorizes PUC to approve, reject, or remand with suggested changes ERCOT protocols. Additionally, ERCOT protocols and enforcement actions are subject to PUC review and may not take effect without PUC approval.

HB 1500 also amends the Utilities Code to require that two PUC members be included in ERCOT's governing body as ex officio non-voting members, one of whom must be the PUC presiding officer and one of whom must be designated by the PUC presiding officer. ERCOT is authorized to adopt a policy allowing the governing body or subcommittee to enter into an executive session closed to commissioners, including the commissioners serving as ex-officio nonvoting members, only to address a contested case or a personnel matter unrelated to the members of the governing body.

Public communications, participation. HB 1500 requires PUC to develop a plan for improving communications with the public, market participants, and other relevant audiences while also responding to changing communications needs. The plan must include goals, objectives, and metrics to assess PUC efforts and be updated at least once every two years.

The bill also revises requirements for PUC and ERCOT meetings. PUC is required to include public testimony as an agenda item for each regular PUC meeting and must allow the public to comment on each agenda item unrelated to a contested case or on any other matters under PUC jurisdiction. The ERCOT governing body or a subcommittee may enter into an executive session closed to the public to address risk management or another matter that ERCOT is authorized to consider in a closed meeting. Otherwise, both the public and the PUC commissioners may be excluded only to address a contested case or a personnel matter unrelated to the members of the governing body.

PUC must require certain electricity providers to provide ERCOT with the reason for each unplanned service interruption. ERCOT must then include this reason in a publicly available report on its website within three business days of service being restored.

Renewable energy. Under the bill, PUC is authorized to require that renewable power facilities have reactive power control capabilities or any other feasible technology designed to reduce the facilities' effects on system reliability.

HB 1500 also requires ERCOT to maintain an accreditation and banking system to award and track voluntary renewable energy credits generated by eligible facilities. Provisions on certain renewable energy goals and a mandatory renewable energy credit system are repealed.

Reports. HB 1500 requires PUC to prepare and submit to the Legislature several reports, including:

- a biennial electric industry report identifying system constraints and needs, summarizing findings from relevant assessments, and outlining information on the Texas electric grid and market, by January 15th of each odd-numbered year;
- an annual conflicts of interest report on the effects that statutes, rules, protocols, and bylaws that apply to conflicts of interest for commissioners and board members have on the ability of PUC and ERCOT to fulfill their duties;
- an annual report related to costs and the implementation status of provisions related to dispatchable and non-dispatchable generation facilities, by December 1;
- a biennial report on the results of a PUC and ERCOT study on the need for increased transmission and generation capacity and recommendations, by December 31 of each even-numbered year; and
- an annual report on the wholesale electric market monitor, by December 1.

Each retail electric provider that offers electricity for sale is required to report to PUC its annual retail sales in Texas, the annual retail sales of its affiliates, and any other information PUC requires relating to affiliations between retail electric providers.

The bill consolidates certain reports about the scope of competition in the electric market and telecommunications by including them in requirements for PUC's biennial report on suggested improvements for the commission's statutory authority and for utility regulation in general, due on January 15 of each odd-numbered year. Certain other reporting requirements are repealed.

Other provisions. HB 1500 adds requirements on voluntary mitigation plans and transmission-owning utility costs, among other provisions.

Voluntary mitigation plans. HB 1500 adds review requirements for PUC related to voluntary mitigation plans entered into by the commission and entities possessing market power that have committed market power abuses or certain other violations. Under the bill, PUC may only approve such a plan if it determines that the plan is in the public interest. If PUC determines that the plan is no longer in the public interest, PUC must agree to modifications with the relevant party or terminate the plan. The bill also specifies that the penalty for a violation of a voluntary mitigation plan may not exceed $1 million per violation.

Allowance for transmission-owning utility costs. The bill requires PUC to establish an allowance for transmission-owning utility costs incurred to interconnect generation resources with the ERCOT transmission system at transmission voltage. The allowance must take into account cost reduction, historical costs, and other reasonable factors. Costs in excess of this allowance are assigned to and collected from the interconnecting generation resource. PUC is required to review and adjust this allowance every five years to account for inflation or potential supply chain issues.

Supporters said

HB 1500, the Sunset bill for the Public Utility Commission (PUC), would improve PUC's transparency and oversight and strengthen grid reliability while limiting the financial impact to consumers. The bill would ensure that PUC's direction of ERCOT adhered to best practices for openness and transparency by prohibiting the commission from using verbal directives except in emergencies, requiring the opportunity for public input on all PUC directives to ERCOT, and prescribing the forums through which those directives may occur.

In the wake of the 2021 winter storm crisis, it is especially important that PUC improve communication with the public in order to regain the trust of both Texas residents and state officials. HB 1500 would support such efforts by requiring PUC to develop and regularly update a comprehensive and strategic communications plan. The bill also would enhance meaningful public participation in PUC processes by requiring that the commission allow an opportunity for public comment on each individual agenda item at each regular commission meeting. Public input is especially important as PUC continues to make changes to better ensure grid reliability. However, PUC's ability to limit comments or the length of allowed testimony would not be affected.

By adding another PUC member as a non-voting member of the ERCOT board, HB 1500 also would ensure that PUC's communication with and oversight of ERCOT did not depend solely on the commission chairperson. As PUC board members would not be allowed to vote on board decisions, these commissioners would not unduly infringe on ERCOT's independence. The bill also would solidify ERCOT's autonomy by allowing the board to exclude PUC commissioners from a closed meeting, particularly a meeting about a situation in which PUC could have to pass judgment on ERCOT, while also clarifying that such closed meetings could only be held on certain sensitive topics.

HB 1500 would establish several policies to help protect consumers from dramatic increases to their electric bills. In January 2023, PUC proposed a market change called the performance credit mechanism (PCM). The PCM would allow power generators to sell credits to electricity retailers that committed to being available to produce more energy during high-demand periods. The bill's $1 billion market cap for reliability programs would limit the impact on electricity bills of costs associated with the PCM.

Provisions on an allowance for the interconnection of new generation facilities also would help to protect customers, as costs for these expensive projects are often distributed across electric bills. The bill would incentivize utilities to build facilities closer to existing transmission lines by requiring all costs in excess of the allowance to be paid by the utilities themselves. Additionally, the requirement that electric generation facilities demonstrate their capability to operate at times of highest reliability

risk could prevent electricity costs from rising if renewable generation facilities were unable to generate sufficient power.

Critics said

HB 1500 could impair ERCOT oversight and unfairly burden renewable energy generators. By allowing ERCOT to exclude designated PUC members from board meetings in certain circumstances, HB 1500 would impede PUC's authority over ERCOT, inhibiting the commission's ability to provide effective oversight. The bill also should not require PUC to allow public comment on all rules discussed in a regular commission meeting, as interested parties already have ample opportunity to provide written comments on proposed rule changes when they appear as meeting agenda items. Allowing these comments to be repeated verbally could be duplicative and could unnecessarily prolong meetings.

Requiring energy generation facilities to meet minimum performance requirements could inhibit the development of the clean energy sector in Texas. HB 1500 could force clean energy projects to supplement electricity output by purchasing from fossil fuel plants, which could be detrimental to their profits.

Requiring transmission line companies connecting generators to the grid to pay all costs in excess of a certain allowance also could unfairly burden wind and solar producers, since their generators must be built in specific locations to produce the highest energy yield. As a result, some wind and solar facilities could be required to bear additional interconnection costs due to building far from existing transmission lines. Lawmakers should focus on removing, rather than adding, roadblocks for renewable energy development because renewables are both more affordable and better for the environment than fossil fuels.

Additionally, HB 1500 includes provisions that are outside the scope of the goals of the Sunset Advisory Commission. Many sections of the bill address topics that were not discussed during the commission's review prior to the legislative session and should not be included in a Sunset bill.

Other critics said

HB 1500 should ensure ERCOT's independence by removing all PUC commissioners from the ERCOT board, as their presence on the board could raise questions of preferential access and undue influence. Furthermore, removing commissioners from the board would eliminate the need to excuse PUC commissioners during executive sessions and avoid the possibility of the commission having to recuse itself in an appeal.

Notes

The HRO digest of HB 1500 appeared in the April 18 *Daily Floor Report*.

Several amendments, many of which included provisions from other bills considered during the 88th regular legislative session, were added to HB 1500 in the Senate. One amendment incorporated provisions from **SB 7** by Schwertner which would have established requirements for dispatchable electric generation reliability and certain reliability and ancillary services programs, including the $1 billion market cap for reliability programs and certain reporting requirements.

A similar bill, **SB 2012** by Miles, also would have established requirements for reliability programs but did not include provisions related to a market cap, ancillary services, or reporting requirements. Both SB 7 and SB 2012 died in the House and the HRO digests of both bills appeared in the May 22 *Daily Floor Report*.

Provisions from **SB 1287** by King were also incorporated into HB 1500 through a Senate amendment. SB 1287 would have established allowances for interconnection costs and the HRO digest appeared in the May 22 *Daily Floor Report*.

Preempting certain municipal and county regulation

HB 2127 by Burrows
Effective September 1, 2023

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HB 2127, the Texas Regulatory Consistency Act, prohibits a municipality or county from adopting, enforcing, or maintaining an ordinance, order, or rule governing conduct in a field of regulation occupied by a provision of certain statutory codes unless the regulation is expressly authorized by another statute. The prohibition applies to the Agriculture, Business & Commerce, Finance, Insurance, Labor, Natural Resources, Occupations, and Property Codes. HB 2127 amends Local Government Code to specify that a municipality may adopt, enforce, or maintain an ordinance or rule only if it is consistent with the laws of the state.

The bill specifies that, under the Labor Code, an occupied field for which a municipality or county may not adopt regulations includes employment leave, hiring practices, breaks, benefits, scheduling practices, and any other terms of employment that exceed or conflict with federal or state law for employers other than a municipality or county. A municipality or county may enforce or maintain any ordinance, order, or rule regulating any conduct related to credit service organizations and credit access businesses, if the regulation was adopted before January 1, 2023, and would have been valid under the law as it existed before the bill's enactment.

HB 2127 prohibits a municipality from adopting, enforcing, or maintaining an ordinance or rule that restricts, regulates, limits, or otherwise impedes a business involving the breeding, care, treatment, or sale of animals or animal products, including a veterinary practice, or the business' transactions if the operator holds a license for the business issued by the federal government or a state. The bill prohibits a municipality from regulating the retail sale of cats and dogs, except that a municipality may enforce or maintain an ordinance or rule adopted before April 1, 2023, that regulates such sale until the state adopts statewide regulation for the retail sale of dogs or cats.

Liability. HB 2127 authorizes any person who has sustained an injury in fact, actual or threatened, from a municipal or county regulation in violation of the bill to bring an action against the municipality or county. A trade association representing the person also may bring such an action. The claimant may recover declaratory and injunctive relief along with costs and reasonable attorney's fees, and a municipality or county is entitled to recover costs and attorney's fees if the court finds the action to be frivolous. Governmental immunity of a municipality or county is waived to the extent of liability created by the bill. A claimant may bring the action in:

- the county in which all or a substantial part of the events giving rise to the cause of action occurred; or
- if the defendant was a municipality, the county in which the municipality is located.

An action under the bill may not be transferred to a different venue without the written consent of all parties. A municipality or county is entitled to receive notice of a claim under the bill at least three months before a claimant files an action.

Supporters said

HB 2127 would provide regulatory consistency and promote prosperity in Texas by preempting local government regulation in areas already regulated by the state. Local ordinances related to labor and employment practices, environmental regulation, and other topics have created a confusing and complex patchwork of requirements that can vary widely between municipalities. This lack of consistency is especially burdensome for businesses that operate in multiple jurisdictions and must navigate compliance with potentially contradictory regulatory schemes. As such, these regulations can impede economic growth and job creation, especially for small businesses.

HB 2127 would reassert the state's role as the sole regulator of commerce and trade within its jurisdiction and provide a more stable, uniform, and predictable

regulatory environment in which businesses could grow and expand across multiple local jurisdictions. While local control is justified in certain circumstances, the intent of the state's constitution in granting home rule status to cities was not to allow them complete autonomy. Cities have begun to regulate far beyond the bounds of their historical roles. HB 2127 would clarify the scope of local governments' authority and free them to direct resources to the traditional issues that they are better equipped to address. Many areas of local authority would not be affected by the bill, including zoning, noise and nuisance ordinances, safety protections, and other powers expressly granted by state law.

HB 2127 would cover a wide range of regulatory areas because it is not practical for the Legislature to individually address each harmful regulation only once every two years during the Legislative session when city councils meet to create such regulations much more frequently. Additionally, protections for workers and against anti-LGBT discrimination in employment and housing would remain under federal law, and local governments are expressly authorized to prohibit employment discrimination by the state Labor Code.

The bill would protect against excessive or frivolous litigation by requiring advance notice of a claim that a person had been harmed by a regulation violating state law, which would allow the local government to cure the violation. The bill would not create a financial incentive for lawsuits since a claimant could not receive compensatory relief, but could only recover costs and receive declaratory or injunctive relief. If the suit was found to be frivolous, a city or county could recover costs and attorney's fees.

Critics said

HB 2127's broad preemptions would inhibit local governments' ability to protect their citizens' interests and pursue innovative and responsive policies tailored to diverse local needs. The bill would undermine the long-standing tradition of local control and home rule in Texas. Local elected officials are best situated to understand the policies their communities need and want. Local government is more immediately accessible and accountable to individual voters than the state Legislature, which can only enact policy every two years. If voters are opposed to local regulations, they can petition to change them or elect new officials.

Texas is large and diverse, and the regulatory policies of one community or region are not necessarily appropriate for another. Although HB 2127 seeks consistency, it could create confusion and complication as local governments tried to determine which ordinances they could or could not enforce, which could be harmful to businesses. The bill is overly broad and could have unintended consequences, as the state is not equipped to replace the many local services and functions that would be preempted. Additionally, the lack of specificity of the bill's applicability could hinder local action, even on responsibilities within cities' authorized purview, for fear of litigation. If local governments overstep their proper authority, the state should craft specific laws with clear applicability to correct the problem.

Many local efforts to protect vulnerable community members, including regulations and initiatives related to public health and safety, affordable housing, and poverty alleviation, could be undermined by the bill's preemptions. Although the bill contains an exemption for local ordinances aimed at curbing predatory lending by credit access businesses, it would not allow cities without similar ordinances to pass them and would prevent existing ordinances from being updated to effectively address the evolution of predatory lending entities. The bill also could eliminate local requirements intended to ensure fair and humane working conditions, such as mandated rest and water breaks for construction workers. Local antidiscrimination ordinances that protect the LGBT community in employment and housing access also could be threatened.

By waiving local governments' liability immunity, the bill's private cause of action could incentivize excessive and costly litigation. The cost of such lawsuits would impose a significant financial burden on city and county resources, which would ultimately pass to taxpayers.

Notes

The HRO digest of HB 2127 appeared in Part One of the April 18 *Daily Floor Report*.

Establishing the Texas Energy Fund for electric facility construction and upgrades

SB 2627, SJR 93 by Schwertner
Effective November 7, 2023

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SB 2627, or the Powering Texas Forward Act, and SJR 93 establish the Texas Energy Fund to be administered and used by the Public Utility Commission of Texas (PUC) to provide loans and grants for the maintenance, modernization, and construction of dispatchable electric generating facilities and backup power. SB 2627 specifies that a generating facility is considered dispatchable if its output can be controlled primarily by forces under human control. SB 2627 became effective on November 7, 2023, when voters approved SJR 93.

The bill authorizes PUC to use money in the fund without further appropriation to provide loans of up to 60 percent of the cost of the project for upgrades to existing dispatchable electric generating facilities or to finance the construction of new facilities that provide a minimum of 100 megawatts of additional capacity for the Electric Reliability Council of Texas (ERCOT) power region.

PUC also is required to provide a completion bonus grant for the construction of dispatchable electric generating facilities that provide a minimum of 100 megawatts of additional capacity for the ERCOT power region using money from the fund. Except in extenuating circumstances, PUC may not provide a grant of more than $120,000 per megawatt interconnected before June 1, 2026, or $80,000 per megawatt interconnected between June 1, 2026, and June 1, 2029. PUC may not provide a grant for a facility interconnected after June 1, 2029, except in extenuating circumstances. The bill authorizes PUC to provide up to $7.2 billion from the fund for loans and completion bonus grants.

PUC also may use money in the fund to provide grants for transmission and distribution infrastructure and electric generating facilities in Texas outside the ERCOT power region for facility modernization, weatherization, reliability and resiliency enhancements, and vegetation management. Proceeds of a grant received by a facility outside the ERCOT power region may not be used for debt payments or compliance with weatherization standards adopted before December 1, 2023. PUC is authorized to provide up to $1 billion for these grants.

PUC is authorized to use up to $1.8 billion from the fund to provide a loan or grant for certain Texas backup power packages, defined as stand-alone, behind-the-meter, multiday backup power sources that can be used for islanding from the rest of the power grid. PUC must contract with a research entity to develop specifications for backup power packages and their interconnection. PUC also must adopt a process to expedite permitting of a backup power package for which a permit under the Clean Air Act is required and for which a loan or grant is awarded.

SB 2627 establishes an advisory committee for the Texas Energy Fund, which may hold public hearings, formal meetings, and work sessions and provide comments and recommendations to PUC based on a semiannual review of the fund's operation. The bill requires PUC to convene the advisory committee to recommend criteria for PUC to employ in making grants or loans under the bill.

The bill establishes restrictions for loans and grants, including circumstances under which they may not be provided and limitations on amounts to be provided. Electric energy storage facilities are not eligible for loans or grants under the bill. SB 2627 also establishes criteria for PUC's evaluation of applications for loans and grants based on applicant characteristics, generation capacity, and estimated costs.

SB 2627 also establishes a procedure in the event of a default on a loan under the bill. In such an event, at PUC's request, the attorney general must bring suit in a Travis County district court for the appointment of a receiver to collect the books, records, accounts, and assets and carry on the business of a loan recipient if necessary to cure a default. The receiver is required to execute a bond set by the court to ensure the proper performance of the receiver's duties. The court may dissolve the receivership on a showing of good cause by the defaulting loan recipient.

SB 2627 requires ERCOT to work with electric utilities to ensure that each facility in the ERCOT power region that is provided a loan or grant from the fund is fully interconnected in the region no later than the date the facility is ready for commercial operation. Except for transmission projects designated as critical for reliability, ERCOT is required to give priority to interconnecting facilities that receive loans or grants under the bill.

SJR 93 amends the Texas Constitution to create the Texas Energy Fund as a special fund in the state treasury outside the general revenue fund. Money in the fund may be administered and used, without further appropriation, only by PUC or its successor to provide loans and grants to finance or incentivize the construction, maintenance, modernization, and operation of electric generating facilities necessary to ensure the reliability or adequacy of an electric power grid in the state. PUC also must allocate money from the fund for loans and grants to eligible projects for electric generating facilities that served as backup power sources. Funds also must be allocated to eligible projects in each region of the state in proportion to that region's load share within an electric power grid. The Legislature may appropriate general revenue for the fund and may transfer money from the fund to general revenue by a provision of the General Appropriations Act. Voters approved the ballot proposal at an election on November 7, 2023.

Supporters said

By creating the Texas Energy Fund and focusing state financial resources on dispatchable generation facilities, SB 2627 and SJR 93 would increase reliability to protect consumers during emergency weather events such as 2021's Winter Storm Uri. The bill also would help to balance the growing proportion of Texas electricity coming from variable renewable energy sources. Because of grid-related crises in the past several years, the state has a unique interest in improving reliability swiftly. SB 2627 would motivate utilities to increase capacity and reliability quickly and jumpstart facility construction by limiting the timeframe in which companies could construct new facilities to receive completion bonuses. Construction of new dispatchable generation facilities has slowed under the current market structure in part due to rising interest rates from private investors resulting in less favorable loan terms. By providing loans and grants for this purpose, the state would avoid the potential consequences of relying solely on the private sector to incentivize construction. By providing grants to non-ERCOT facilities, the bill also would ensure that the entire state would benefit, not just those in the ERCOT power region.

Market impact. SB 2627 and SJR 93 would have a limited impact on the market compared to other mechanisms, such as production tax credits or direct procurement of power plants through government subsidies. The bill should not be construed as reregulation because the loan program is an in-market solution to incentivize construction, would require developers to pay for at least 40 percent of a project using their own funds, and would require repayment of funds rather than providing a direct subsidy.

SB 2627 also would foster a more competitive market environment by removing barriers to entry into the electric market. Older facilities that cannot compete with new construction should be taken off the grid in order to improve energy efficiency and decrease emissions.

Default risk. The risk of default would be limited by the application process and by the requirement for developers to invest some of their own funds into the projects. SB 2627 would include explicit application criteria, and applications would be evaluated by PUC to ensure that candidates have a proven record of creditworthiness and successful operation, and are thus unlikely to default. Even in the case of a default on a loan, assets produced under the bill would be placed under receivership and then returned to the market.

Renewables, batteries, and new technology. By creating loan and grant programs for dispatchable generation, SB 2627 would allow the state to take proactive measures to balance potential variation in renewable energy resources. While substantial renewable energy resources such as wind and solar have been interconnected with the ERCOT grid, the state cannot afford to rely entirely on these energy sources because of their variability.

Batteries should not be eligible for loans and grants under SB 2627 because of their limitations. For example, batteries cannot provide power for the length of time required to ensure reliability in the case of severe weather events. Additionally, several existing PUC programs and federal subsidies provide support for energy storage and new technology.

Performance credit mechanism. Although some have suggested that SB 2627 and SJR 93 would not be effective without the PUC's proposed performance credit mechanism (PCM), which would allow power generators to sell credits to electricity retailers in exchange for

committing to being available to produce more energy during high-demand periods, SB 2627 is important in itself because it would incentivize construction in the short term and addresses the urgency of reliability concerns. While some have argued that the PCM would more effectively address the electric market's financial concerns, providing loans or grants would decrease the amount of capital needed for construction and operations, thus lowering the revenue needed by developers to break even and increasing profit margins as a result. Market changes such as the PCM could be effective alongside the programs established under the bill to address revenue in the long term.

The PCM should not supplant the current market design on its own, however, because the mechanism would be funded by ratepayers and, if not limited effectively, could cause electricity prices to increase. SB 2627 and SJR 93 would be funded by taxpayer dollars and an existing budget surplus, which would ensure that electricity consumers did not bear the costs of new construction. The PCM could create substantial costs for ratepayers even if it did not result in any new energy generation, while SB 2627 would ensure that there was only a cost to the state if new facilities were built.

Critics said

SB 2627 and SJR 93 would not be guaranteed to increase reliability because there is currently little to no barrier to entry to constructing power plants in Texas and insufficient investment and initial funding may not be the primary source of reliability problems. There is already substantial private investment in the electric market and state involvement could come with risks.

Market impact. The government should not be involved in financing private industry when a robust private market already exists for this purpose. Since the loan and grant programs under the bill would operate within the electricity market, they could cause market distortion. The bill effectively would divide the market into two groups: companies that received loans and companies that did not, which could create an economic disadvantage for the latter. These disadvantages, coupled with the requirements and qualification criteria for the grant and loan programs, also could cause SB 2627 and SJR 93 to be construed as reregulating the electric market.

Since the bill targets the majority of the fund towards new construction, companies could decide to retire older facilities that might lose profits by having to compete with new construction, which could remove megawatts from the grid. Companies might also slow or halt plans for new construction until they knew if they had been selected for a loan, which could slow progress toward improved reliability. The loan program also could disincentivize private investment. The market impact of SB 2627 could require more subsidies and reregulation to sustain market growth as companies could come to rely on state intervention. The state should instead focus on market-based approaches that create competition rather than potential distortion.

Default risk. SB 2627 could expose the state and taxpayers to financial risk. Many government loan programs related to energy have resulted in high-profile defaults in the past, and the state should not subject itself and taxpayers to the risk of electric generation facilities defaulting on their loans.

Renewables, batteries, and technology. SB 2627 exclusively directs financial resources toward fossil fuels and does not address the need to reduce greenhouse gas emissions. Any solution to a reliability problem should be energy-source and technology-neutral. Loans and grants under SB 2627 also should be available for renewable energy and energy storage. Since the bill would target dispatchable generation but explicitly exclude energy storage facilities, renewable energy resources that could become dispatchable using batteries would not be eligible for financial support. The state should focus on developing new carbon-neutral technology instead of supporting only existing dispatchable generation facilities.

Other critics said

SB 2627 would not effectively address the issue of insufficient revenue for dispatchable generation, which has slowed electric generation facility construction. Electric facilities need guaranteed revenue, rather than access to capital, to build plants, since cheaper renewable energy threatens profits from dispatchable generation. If facilities could not generate sufficient revenue, they would not be able to repay loans under the program or generate profits, and, as such, would have no incentive to build. The PUC's proposed performance credit mechanism (PCM) would better address these problems by increasing revenue for retailers that committed to being available to produce energy during high-demand periods and would provide sufficient incentives to build new power plants. SB 2627, with additional guardrails to prevent market distortion, could serve as a short-term jumpstart for the electric market, but would only be effective in the long term alongside a functional PCM.

Notes

The HRO digests of both SB 2627 and SJR 93 appeared in Part One of the May 22 *Daily Floor Report*.

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*Finally approved

Extending postpartum Medicaid coverage to 12 months

HB 12 by Rose
Effective June 18, 2023

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HB 12 requires the Health and Human Services Commission (HHSC) to provide Medicaid coverage to Medicaid-eligible women for at least 12 months beginning on the last day of the woman's pregnancy and ending on the last day of the month in which the 12-month period ends. The stated legislative purpose is to extend Medicaid coverage for people whose pregnancies end in the delivery or natural loss of the child.

As soon as practicable after the bill's effective date, the HHSC executive commissioner is required to seek a Medicaid state plan amendment from the appropriate federal agency. HHSC may delay implementing the bill until the state plan amendment is approved.

Supporters said

Extending postpartum Medicaid coverage to 12 months after the end of a pregnancy could lower maternal morbidity and mortality rates in the state. Many pregnancy-related deaths are preventable, and providing comprehensive health care after delivery can improve postpartum outcomes. HB 12 would give Medicaid recipients better access to primary and preventative care during and after pregnancy, which could reduce racial disparities in health outcomes for pregnant women and reduce health care costs by preventing postpartum complications. Extending postpartum coverage to 12 months allows the state to apply for a state plan amendment, which requires an expedient response from the federal government.

The legislative purpose was written with consideration of federal requirements for the state plan amendment and will allow the state to provide extended Medicaid coverage consistent with state abortion laws.

Critics said

The legislative purpose as written may not meet federal guidelines for postpartum Medicaid extension and should not be included in the bill to ensure that the state plan amendment will be approved. The legislative purpose also is unnecessary because abortion is illegal in the state.

Notes

The HRO analysis of HB 12 appeared in Part One in the April 20 *Daily Floor Report*.

Ending anonymous reports of child abuse and neglect to DFPS

HB 63 by Swanson
Effective September 1, 2023

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HB 63 amends the information an individual must include when reporting child abuse or neglect to require:

- the facts that caused the individual to believe a child was abused or neglected and the source of the information;
- the individual's name and telephone number; and
- the individual's home address or, if the individual is a mandatory reporter, the individual's business address and profession.

If the individual making a report uses the toll-free telephone number operated by the Department of Family and Protective Services (DFPS) for reporting child abuse or neglect and the individual is unwilling to provide a name and telephone number, the DFPS representative receiving the report is required to notify the individual that:

- DFPS is not authorized to accept anonymous reports of abuse or neglect;
- reports of abuse or neglect may be made by calling 9-1-1 or making a report to any local or state law enforcement agency; and
- the identity of anyone making a report is confidential and may be disclosed only by court order under certain circumstances or to a law enforcement officer for criminal investigation of the report.

If a report is made orally, DFPS or the relevant law enforcement agency is required by the bill to notify the individual that the report is being recorded and that making a false report is a criminal offense punishable as a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) or a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000). DFPS employees may only access the identity of a person making a report of alleged or suspected child abuse or neglect under certain circumstances established in the bill, includes instances in which employees are involved in the investigation or case.

If an individual makes an anonymous report to a local or state law enforcement agency and the report is referred to DFPS, DFPS is required to conduct a preliminary investigation. However, before taking any action to investigate such a report, a DFPS representative must provide to a parent or other person with legal custody of a child under investigation information on the DFPS representative's identity along with a summary of DFPS' investigation procedures and certain rights the person has during the investigative process. The parent or individual with legal custody must be given a reasonable amount of time to read or review the summary.

Supporters said

HB 63 could reduce false child abuse and neglect reports by requiring those who report to DFPS to leave their name and contact information. Anonymous reports may be more likely to be false or inaccurate, which wastes resources that could be directed towards children who are in danger. False reports can also be used to weaponize DFPS against people involved in a personal disagreement. The criminal offense for false reporting does not sufficiently deter false anonymous reports, since it is difficult for law enforcement to identify who made the report.

HB 63 could also improve the accuracy of reports and subsequent investigations. Anonymous reports are more difficult for Child Protective Services (CPS) to investigate than confidential reports since CPS cannot follow up with the person filing the report.

The bill is unlikely to substantially reduce the number of legitimate reports made to DFPS because few anonymous reports are proven to have merit. Additionally, mandatory reporting laws still require all adults in the state to report suspected child abuse and neglect. Whether or not they choose to report anonymously, an individual's

information is confidential and privileged, which protects the person from retaliation. Furthermore, anonymous reports could still be made to law enforcement agencies if a person was unwilling to give DFPS the person's name and contact information.

Discouraging, rather than eliminating, anonymous reporting to DFPS would not sufficiently address the problems the bill is designed to solve because CPS already has a policy to discourage people from reporting anonymously by explaining the benefits of leaving their name and contact information.

Critics said

HB 63 could discourage people from reporting suspected child abuse or neglect to DFPS by removing the option to report anonymously. Some anonymous reports lead to substantiated findings of abuse or neglect. If a person reporting the abuse was unwilling to give the person's name and contact information, eliminating anonymous reports could leave some children in dangerous situations. Additionally, there is insufficient data on the harms caused by anonymous reporting to justify potentially reducing legitimate reports.

Although people can still make anonymous reports to law enforcement agencies, law enforcement may not have the resources to properly investigate an incident that would be more appropriate for CPS to handle, especially if the child was not in immediate danger. Instead of eliminating anonymous reporting to DFPS, the bill should require DFPS to discourage anonymous reports but still allow for investigation in cases where a reporter's personal information is not provided. Additionally, the initial intake interview should be in-depth even when reports are anonymous to allow for more accurate information.

Notes

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

Other bills related to child abuse and neglect reporting were considered by the Legislature.

HB 1667 by Jetton, which died in the Senate, would have amended certain mandatory reporting requirements to apply only to professionals who worked directly with children. The bill also would have allowed mandatory reporters to refer certain families to community-based prevention or family preservation services instead of reporting the family for child abuse or neglect. Reporters would have been required to provide their name and contact information. The HRO digest of HB 1667 appeared in Part Two of the May 9 *Daily Floor Report*.

SB 182 by Miles, effective September 1, 2023, requires employees of DFPS or the Texas Juvenile Justice Department to report criminal offenses committed by another employee against a recipient of services from those agencies. The HRO digest of SB 182 appeared in the May 15 *Daily Floor Report*.

Legalizing fentanyl testing equipment

HB 362 by Oliverson
Died in Senate committee

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HB 362 would have exempted from an offense related to the possession or delivery of drug paraphernalia a person who used, delivered, or possessed or manufactured with intent to use or deliver fentanyl testing equipment.

Supporters said

HB 362 would save lives by allowing people to use fentanyl test strips without fear of prosecution. Fentanyl overdoses and deaths have rapidly increased in recent years, and many people take fentanyl unknowingly since it is often mixed into other drugs. Fentanyl test strips are an accurate and cost-effective way to test for the presence of fentanyl and fentanyl derivatives in drugs. The bill would enable people to make more informed decisions about their drug use, which could reduce fentanyl overdoses and deaths and protect people from dangerous drugs.

Fentanyl test strips do not enable drug use. While drug use is a problem, test strips are part of an effective approach to addressing drug addiction and could encourage drug users to seek additional services. Fentanyl test strips also are the most readily available type of test strips and fentanyl is the most deadly drug on the market. This makes fentanyl test strips the best option for reducing drug overdoses and deaths.

Critics said

Allowing the use of fentanyl test strips could make some people more comfortable with or facilitate drug use.

Other critics said

HB 362 also should allow for the use of testing equipment that can detect the presence of other dangerous drugs, such as xylazine, to address other potential drug crises since fentanyl test strips can detect only the presence of fentanyl and fentanyl derivatives.

Notes

The HRO analysis of HB 362 appeared in the April 10 *Daily Floor Report*.

Another bill related to fentanyl, **HB 6** by Goldman, which designates fentanyl deaths as murders and enhances certain penalties, is also included in the Criminal Justice and Public Safety section of this *Major Issues* report.

Increasing vehicle asset limits for SNAP

HB 1287 by Guillen
Effective September 1, 2023

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HB 1287 specifies that when the Health and Human Services Commission (HHSC) determines or recertifies a person's eligibility for the Supplemental Nutrition Assistance Program (SNAP), HHSC may not consider as resources the value of an applicant's vehicles, up to $22,500 for the first vehicle and $8,700 for each additional vehicle.

Supporters said

HB 1287 would increase limits for the state's SNAP Vehicle Asset Test to ensure that families did not lose their benefits unnecessarily. Inflation has caused large increases in the value of used cars. As a result, many families who were previously eligible for SNAP have lost their benefits even though their life circumstances have not changed. The low vehicle asset limits currently in place can prevent individuals with SNAP from owning a reliable car, which often makes it more difficult to maintain a job. The bill would appropriately update the limits to reflect current market values and economic conditions.

By increasing the limits for the Vehicle Asset Test rather than eliminating it altogether, HB 1287 could help ease economic burdens and protect more Texans from food insecurity while continuing to ensure that benefits were given to people who needed them the most. Additionally, the one-time increase would allow elected representatives to maintain control over necessary adjustments rather than relying on an automatic process.

The bill would not require additional state funding because SNAP benefits are federally funded.

Critics said

While a one-time increase to the vehicle asset limits would increase food security in the short term, the bill should include a mechanism to periodically adjust the limits for inflation to make the reform more sustainable.

Other critics said

The bill should eliminate the Vehicle Asset Test altogether because it is not a federal requirement for SNAP. Eliminating the test could help to further strengthen communities and overall health by increasing access to SNAP for more food-insecure families.

Notes

The HRO analysis of HB 1287 appeared in the April 17 *Daily Floor Report*.

Prohibiting certain gender-related procedures and treatments

SB 14 by Campbell
Effective September 1, 2023

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For the purpose of transitioning a child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child, or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex, **SB 14** prohibits a physician or health care provider from knowingly:

- performing certain surgeries that sterilize the child;
- performing a mastectomy;
- providing, prescribing, administering, or dispensing certain prescription drugs that induce transient or permanent infertility; or
- removing any otherwise healthy or non-diseased body part or tissue.

The bill does not apply to certain services provided by a physician or health care provider, with the consent of the child's parent or legal guardian, including:

- puberty suppression or blocking prescription drugs for the purpose of normalizing puberty for a minor experiencing precocious puberty;
- appropriate and medically necessary procedures or treatments for a child who was born with a medically verifiable genetic sex development disorder; or
- appropriate and medically necessary procedures or treatments for a child who does not have the normal sex chromosome structure for males or females as determined by a physician through genetic testing.

The bill also does not apply to the provision of a prescription drug to a child that is otherwise prohibited if the prescription drug is part of a continuing course of treatment that began before June 1, 2023, and the child had attended at least 12 mental health counseling or psychotherapy sessions during a period of at least six months before the treatment began. A child who is exempt for this reason is required to wean off the prescription drug over a period of time and in a way that is safe, medically appropriate, and that minimizes the risk of complications and may not switch to or begin another prohibited course of treatment.

SB 14 prohibits public money from being directly or indirectly used, granted, paid, or distributed to any health care provider, medical school, hospital, physician, or any other entity, organization, or individual that provides or facilitates the provision of a prohibited procedure or treatment to a child.

Medicaid and the Children's Health Insurance Plan (CHIP) may not cover services that are intended to transition a child's biological sex. The Health and Human Services Commission (HHSC) may not provide Medicaid or CHIP reimbursement for prohibited services.

A physician or applicant for a license to practice medicine commits a prohibited practice if the person performs a gender transitioning or gender reassignment procedure or treatment in violation of the bill's provisions. The Texas Medical Board must revoke the license or other authorization to practice medicine of a physician who violates the bill. The board also must refuse to admit to examination or refuse to issue or renew a license to a person who violates provisions on gender transition procedures for minors. These sanctions are in addition to any other grounds for revocation of a license, refusal to admit a person for examination, or refusal to issue or renew a license.

If the attorney general has reason to believe that a person is committing, has committed, or is about to commit a violation of SB 14, the attorney general may bring an action to enforce the bill to restrain or enjoin the person from committing, continuing to commit, or repeating the violation. The venue for an action brought under the bill is a district court of Travis County or the county where the violation occurs or is about to occur.

Supporters said

SB 14 aims to protect children and adolescents from potentially harmful treatments and procedures intended to change their sex, including surgeries, cross-sex hormones, and puberty blockers. Gender-reassignment surgeries are irreversible, and hormonal treatments can also lead to permanent physiological changes, including unwanted side effects. Children and adolescents are not able to give fully informed consent for such serious treatment, and in many cases adolescent gender dysphoria resolves itself over time. If some doctors in Texas fail to safeguard minors from harm, the state has a duty to intervene.

While certain forms of treatment may be rare, an increase in the establishment of gender clinics has corresponded with a rise in reported gender dysphoria among minors. However, there is not conclusive evidence to suggest that treatments aimed at physical transition are effective in resolving dysphoria. With these treatments, patients risk side effects such as bone health issues, cardiovascular problems, and infertility. Regulatory authorities across Europe where gender-related healthcare has long been established have begun to withdraw their support for hormonal treatments for minors due to a lack of supporting evidence in systematic reviews. Physicians who facilitate physical gender transitions for minors without solid, scientific evidence and justification are effectively experimenting on minors. Furthermore, it is not clear that gender clinics are following rigorous and thorough processes to determine the best course of care for patients. Professional counseling remains the best and most scientifically supported treatment for minors with gender dysphoria.

SB 14's enforcement would focus on doctors who violated its prohibitions, not on parents trying to help their children. Well-meaning parents may be misinformed that their child will be more likely to commit suicide if the child is not allowed to transition, but there is a lack of evidence to suggest that surgical or hormonal gender transition treatment prevents suicide. While suicidal ideation may be higher than average among transgender youth, there is little evidence to suggest that actual suicide rates are significantly higher. Even for suicidality, the causal role of gender dysphoria is unclear, as such youth often present with other, often pre-existing, mental and emotional problems. Counseling and other appropriate mental healthcare resources would be better ways to address these issues rather than a potentially permanent physical transition.

SB 14 would follow scientific best practice by allowing minors who are currently receiving prescription drugs for gender transition purposes to continue using them temporarily, as necessary, to prevent side effects from abruptly stopping treatment. While some have suggested that SB 14 could have a chilling effect on mental healthcare for children with gender dysphoria, the bill would require that a minor had received extensive counseling in order to continue using prescribed medication until it was medically safe to stop. The bill would continue to allow use of puberty blockers for precocious puberty because, unlike gender dysphoria, it is a medically verifiable disease and the drugs used to treat it are approved by the FDA for that purpose.

Critics said

SB 14 would prevent transgender children and adolescents from receiving safe, medically necessary, and potentially life-saving health care to address gender dysphoria symptoms. Gender-affirming care is age appropriate and carried out carefully in thorough consultation between parents and physicians. It usually begins with social transition and eventually involves the use of puberty blockers that prevent unwanted physical developments that would make later physical transition more difficult, but that are reversible.

Cross-sex hormones are rarely used for minors, typically are not available until a person turns 16, and require parental consent. Gender-affirming surgeries for minors are extremely rare and offered only under specific conditions; genital surgeries are not available until adulthood. The vast majority of people who identify as transgender continue to do so throughout their lives, but treatments with permanent consequences are not offered until a transgender person is old enough to give informed consent. These treatments are evidence-based and supported by major medical associations and health associations. All medical treatment involves weighing potential risks and benefits, but SB 14 would be an overreach by government to determine private medical decisions that should be kept between patients, parents, and doctors.

Gender-affirming care, including use of puberty blockers, can improve mental health and significantly decrease risk of suicidal ideation. Transgender youth already experience disproportionate social discrimination and high rates of suicidality. Blocking access to gender-affirming care could increase their mental and emotional distress and make suicides more likely.

SB 14 would unjustly discriminate against transgender minors by prohibiting them from receiving forms of care that would continue to be offered to patients experiencing precocious puberty or who were intersex. Due to the liability it would impose on doctors, the bill could have a chilling effect on all mental healthcare for transgender youth, including counseling and prescription psychiatric medications.

Notes

The HRO analysis of SB 14 appeared in the May 12 *Daily Floor Report*.

Prohibiting certain COVID-19-related mandates

SB 29 by Birdwell, SB 7 by Middleton, Third Called Session
Effective September 1, 2023, effective February 6, 2024

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SB 29 prohibits governmental entities from implementing, ordering, or otherwise imposing a mandate to prevent the spread of COVID-19 that requires:

- a person to wear a face mask or other face covering;
- a person to be vaccinated against COVID-19; or
- the closure of a private business or a public, charter, or private school.

Limitations on face mask mandates do not apply to an order or mandate that relates to state supported living centers, facilities operated by the Texas Department of Criminal Justice or the Texas Juvenile Justice Department, municipal or county jails, or hospitals or other health care facilities owned by a governmental entity that prescribe certain rules conflicting with the limitation. Additionally, limitations on mandates related to vaccines apply only to the extent that they do not conflict with certain federal rules.

SB 7 prohibits an employer from adopting or enforcing a mandate requiring an employee, contractor, or applicant to be vaccinated against COVID-19 as a condition of employment or a contract position. "Employer" means a person, other than a governmental entity, who employs one or more employees, and "contractor" means a person who undertakes specific work for an employer in exchange for a benefit without submitting to the employer's control over the manner, methods, or details of the work.

An employer also may not take an adverse action against an employee, contractor, or applicant for refusal to be vaccinated against COVID-19. "Adverse action" is defined as an action taken by an employer that a reasonable person would consider was for the purpose of punishing, alienating, or otherwise adversely affecting an employee, contractor, or applicant.

A health care facility, health care provider, or physician may establish and enforce a reasonable policy that includes requiring the use of protective medical equipment by an employee or contractor of the facility, provider, or physician who is not vaccinated against COVID-19 based on the level of risk the individual presents to patients from the individual's routine and direct exposure to patients. Establishing or enforcing such a policy is not considered an adverse action.

An employee, contractor, or applicant may file a complaint with the Texas Workforce Commission (TWC) against an employer who takes an adverse action in violation of the bill. On receipt of such a complaint, TWC is required to conduct an investigation to determine whether the employer took an adverse action against the complainant because of the complainant's refusal to be vaccinated against COVID-19. For complaints against a health care facility, health care provider, or physician, TWC is required to consult with the Department of State Health Services to determine if the entity's policy was reasonable.

TWC may request that the attorney general bring an action for injunctive relief against the employer to prevent further violations of the bill. The action must be filed in a district court in Travis County or the county in which the alleged adverse action occurred. In such an injunction, a court may include reasonable requirements to prevent further violations.

TWC is required to impose on an employer who violates the bill an administrative penalty of $50,000 for each violation, unless the employer:

- hires the applicant for employment or offers a contract to the applicant for a contract position; or
- reinstates the employee or contractor and provides back pay from the date the employer took the adverse action and makes every reasonable effort to reverse the effects of the adverse action.

If TWC determines that the employer violated the

bill, TWC may recover reasonable investigative costs from the employer, regardless of whether the employer took the above actions to avoid an administrative penalty. TWC is required to adopt rules as necessary to enforce the bill.

Supporters said

SB 29 and SB 7 would protect the individual liberties of Texans by restricting certain mandates related to COVID-19.

SB 29 would maintain economic health and individual freedoms by prohibiting governments from enacting restrictive COVID-19-related mandates. Cities in other states continue to use ineffective mandates, and these mandates have had negative impacts on economies, mental health, and education. The bill would not impact mandates related to future unknown viruses since it would apply only to COVID-19 and its variants, and major health organizations have indicated that COVID-19 is unlikely to become deadlier.

Under the bill, some facilities could continue to impose mandates to reduce the spread of COVID-19 in certain confined or vulnerable populations and to comply with federal vaccine requirements. Private entities also would retain the ability to limit occupancy or require customers to wear masks.

SB 7 would protect an individual's right to make private medical decisions without fear of retribution by prohibiting private employers from adopting or enforcing a COVID-19 vaccine mandate for employees, contractors, and applicants. Many people do not want to receive the COVID-19 vaccine due to medical issues, reasons of conscience, or other concerns. Texans should not have to choose between receiving the COVID-19 vaccine and their livelihoods.

Medical facilities should not be exempted from the bill because healthcare workers have the same right to medical freedom as other workers, and the healthcare industry should be held to the same standard as any other industry. COVID-19 vaccine mandates also could cause some healthcare workers to leave the industry, which could result in staffing issues and decrease the quality of care in some facilities. The definition of "contractor" could cover medical and nursing students, providing these protections for additional people in the state. In addition, medical facilities would not risk losing any federal or state funding due to recent federal rule changes related to COVID-19 vaccine requirements for Medicare- and Medicaid-certified providers and suppliers.

The bill would ensure that medical facilities could adopt certain policies to accommodate workers who were not vaccinated in order to protect patient safety, such as requiring the use of personal protective equipment. Though state law already regulates health care facility policies on vaccine requirements, it does not sufficiently ensure that medical or conscience exemptions are granted to individuals who do not want to receive a vaccine.

The Texas Workforce Commission (TWC) is well suited to appropriately handle complaints related to COVID-19 vaccine requirements due to its experience with workforce complaints. If a complaint was made against a medical facility, TWC would be required to consult with the Department of State Health Services to determine the appropriateness of a facility's COVID-19 vaccine policy to ensure decisions were made accurately. Enforcing the bill through a TWC complaint process also would ensure that there was less opportunity for frivolous lawsuits against employers. Additionally, the administrative penalty for violating the bill would be appropriate for the seriousness of the issue and would effectively incentivize businesses to follow the law.

Critics said

SB 29 and SB 7 would risk public health by prohibiting governmental entities and private employers from taking steps to protect employees and the public from COVID-19.

SB 29 would prevent local and state governments from responding to future COVID-19 variants that could be deadlier than current variants. The bill also would prevent local governments from responding to differing local needs related to COVID-19 prevention, such as those that may result from varying population densities. Explicitly prohibiting COVID-19-related mandates is unnecessary because cities in Texas do not currently have these kinds of mandates in place.

The bill should include exemptions to the mask mandate prohibition for assisted living facilities and other public hospitals to protect vulnerable populations and ensure consistent application of the bill across hospitals.

SB 7 would interfere with a private business' right to set policies for its workplace to ensure a safe and healthy work environment. Texas is an at-will employment state, so aside from protected classes such as sex and race, employers should be able to make staffing decisions at their discretion, including for contractors.

The bill would not sufficiently allow medical facilities to take necessary steps to protect staff and patients, and these facilities should be exempt from the bill. Medical professionals should be trusted to make appropriate decisions to ensure patient safety, especially when serving vulnerable populations, and state law already regulates health care facility policies on vaccine requirements. Childcare facilities also should be exempt since these sites also serve vulnerable populations.

Medical facilities could lose federal funding if the federal government reinstated certain COVID-19 vaccine requirements in the future but facilities were not allowed to require these vaccines for employees under state law. Hospitals' quality of care also could decrease if fewer employees were vaccinated against COVID-19, which would put federal Medicare funding at risk.

SB 7 should specify the kinds of policies that would be considered reasonable to ensure that the standard for reasonableness was clear. Additionally, the bill should include a sunset date so that a future legislature may revisit the issue and determine if such legislation was still necessary.

The administrative penalty for violating the bill would be too high and could overburden small businesses, which sometimes struggle to keep up with regulatory changes.

Other critics said

SB 29 also should prohibit private entities from implementing COVID-19-related mask mandates to further protect individual freedoms, and SB 7 should be expanded to prohibit employers from requiring employees to receive any vaccine, not just the COVID-19 vaccine. The bill also should protect college and university students and applicants for admission from being required to receive the COVID-19 vaccine.

Notes

The HRO digest of SB 29 appeared in Part One of the May 22 *Daily Floor Report*.

The HRO analysis of SB 7 (88-3) appeared in the October 25 *Daily Floor Report*.

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Natural Resources and Environment

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*Finally approved

Establishing the Texas Land and Water Conservation Fund

HJR 138, HB 3165 by Holland
Died in the Senate

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HJR 138 and its enabling legislation, **HB 3165**, would have created the Texas Land and Water Conservation Fund as a fund outside the state treasury. HB 3165 also would have established the Texas Land and Water Conservation Board composed of five voting members, including:

- the commissioner, or a designee, of the General Land Office who would have been the board chair;
- the executive directors, or their designees, of the Texas Commission on Environmental Quality and the Parks and Wildlife Department;
- the executive director of the State Soil and Water Conservation Board; and
- the executive administrator, or a designee, of the Texas Water Development Board.

The board could have used the fund only to:

- award a grant for a public parks or natural areas project or a natural resource conservation project as provided for under the bill;
- award a grant to provide matching funds for participation in a federal program for such projects; and
- pay expenses to administer the fund, not to exceed three percent of money disbursed per year.

The fund could not have been used to facilitate the use of eminent domain or for the acquisition or transfer of real property to be managed by the federal government. Eligible projects would have included public park or natural areas projects and a natural resource conservation projects that benefited, protected, or enhanced:

- public access, the local park grant program, local parks, and recreation trails or trail easements;
- farm, ranch, or forest land, including through conservation easements;
- wildlife or wildlife habitats;
- nature-based projects that use water for water quality and quantity; and
- certain soil erosion, wildlife habitat, native grassland, or water restoration projects.

The bill also would have established provisions on the types of entities eligible for a grant, criteria for prioritizing eligible projects, the application process, and application approval.

The board would have been required to implement a financial assistance grant program to eligible entities for conservation planning, application preparation, and administrative costs associated with eligible projects. If enough eligible applications were received, the board would have been required to allocate half of the funding in a given cycle to public parks or natural areas projects and half to natural resource conservation projects.

HB 3165 would have established a technical advisory committee to assist the board in developing and evaluating application processes and criteria and providing recommendations to the board. The committee would have been composed of representatives from nongovernmental entities, higher education institutions, and agencies whose executive officers served on the board.

The conservation board would have been required to submit a biennial report to the Legislature quantifying the benefits of projects that received grants.

HJR 138 would have amended the Texas Constitution to create the Texas Land and Water Conservation Fund. Money in the fund could have been administered and used, without further appropriation, by the Texas Land and Water Conservation Board or its successor to provide funding for conservation and restoration of and public access to land, water, and natural resources.

Supporters said

HB 3165 would help preserve and enhance Texas' parks, landscapes, natural resources, and agriculturally

productive lands by creating a state grant program to fund projects for those purposes. The state's population continues to grow, increasing development pressures on wild spaces, parks, farms, and ranches. Conservation efforts are needed to ensure that Texans continue to enjoy natural recreational spaces, biodiversity, and an ample supply of clean water. With a substantial state budget surplus, the Legislature has a unique opportunity to incentivize projects that will conserve the state's lands and waters for future generations.

Farms and ranches that provide food, fuel, and fiber are vital to Texans' well-being, but many family farms struggle to pay estate taxes and preserve ownership. The conservation fund would help farmers and ranchers maintain agricultural productivity through conservation easements that may limit certain land use, such as development, to protect natural resources, open spaces, air or water quality, or the historical, architectural, archeological, or cultural aspects of a property while ensuring other uses, including agricultural use, can be continued by landowners.

The fund also would help protect existing parks by providing state matches for local park grants and could be used to support land acquisition to expand state parks. Parks help drive tourism and jobs in many communities, especially in rural areas, but current trends project that a substantial number of Texas counties may not have enough parkland in the future.

Additionally, HB 3165 would help to protect private property rights by prohibiting any conservation fund money from being used to support the use of eminent domain or federal ownership or control of Texas lands. Conservation easements supported by the conservation fund would not result in a significant net reduction in property taxes because most easements are placed on lands that are already classified as agricultural or otherwise not appraised based on market value. Conservation easements are an alternative and voluntary expression of property rights that enable land owners to continue using their land for agricultural purposes by protecting the land from pressure to develop, without imposing any maintenance and operation costs on the state.

Critics said

HB 3165 could undermine private property rights by allowing the use of state funds to promote the adoption of conservation easements. Conservation easements permanently shift control over certain land use from owners to easement holders, often government agencies. Landowners with easements for agricultural purposes could be prevented from allowing development on their land and therefore, unable to adapt to changing technological and environmental circumstances. The conservation fund also could disproportionately benefit certain landowners who could reduce their property taxes by accepting a conservation easement on larger amounts of their property without the inconvenience that may be experienced by smaller farms.

Notes

The HRO analyses of HJR 138 and HB 3165 appeared in the April 28 *Daily Floor Report*.

Other bills related to natural resource improvements and conservation were considered by lawmakers during the 88th legislative session.

SB 28 by Perry authorizes financial assistance for certain water supply infrastructure, creating the New Water Supply for Texas Fund, the Texas Water Fund, and the Statewide Water Public Awareness Account administered by the Texas Water Development Board. The HRO analysis of SB 28 appeared in the May 16 *Daily Floor Report* and appears in this *Major Issues* report.

SB 1648 by Parker creates the Centennial Parks Conservation Fund administered by the Texas Parks and Wildlife Department for the creation and improvement of state parks. The HRO analysis of SB 1648 appeared in the May 15 *Daily Floor Report*.

Both bills took effect on January 1, 2024, after their respective constitutional amendments were approved by voters on November 7, 2023. Analyses of these amendments can found in the *Constitutional Amendments* report.

Creating the Gulf Coast Protection Account

HB 2416 by Paul
Vetoed by the governor

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HB 2416 would have created the Gulf Coast Protection Account within the general revenue fund administered by the General Land Office (GLO). The bill would have required GLO to deposit in the account any federal money received by the state for the protection of the Gulf Coast, to the extent permitted by federal law.

Money in the fund could have been used only to pay for expenditures that:

- were eligible for credit towards the non-federal match of certain programs under the United States Army Corps of Engineers;
- complied with the terms of a local cooperation agreement executed by GLO and the Gulf Coast Protection District; and
- were for projects necessary or useful for the protection of the portion of the Gulf Coast located within the territory of the district.

Supporters said

By establishing the Gulf Coast Protection Account, HB 2416 would complement the policy and financial commitments the Legislature has already made to the protection of citizens, the environment, and industries along the Texas Gulf Coast. During previous legislative sessions, the Legislature created and funded the Gulf Coast Protection District, appropriating millions towards projects that would protect major cities and infrastructure against flood damage and storm surge. With this account, HB 2416 would support the continuation of these projects that will require large amounts of state and federal resources. By investing money into the account, the bill would allow the General Land Office (GLO) to substantially grow the money over time, creating a larger fund that could be used as needed. Furthermore, HB 2416 would demonstrate Texas' commitment to protecting an essential piece of the nation's economic supply chain, which could prompt additional federal matching funds for these projects.

Critics said

HB 2416 could limit coastal protection efforts by requiring that any federal money received by the state for such purposes be deposited into an account that could be spent only on the small portion of the Gulf Coast located within the Gulf Coast Protection District.

Other critics said

HB 2416 should be more narrowly tailored to ensure that the Gulf Coast Protection Account is reserved only for funds dedicated to the Coastal Texas Protection and Restoration Feasibility Study. This would prevent funding for other Gulf Coast conservation efforts from being siphoned for a project that has yet to be congressionally approved or from being held in a trust for an undetermined period of time.

Notes

The HRO analysis of HB 2416 appeared in the April 17 *Daily Floor Report*.

Establishing funds for water infrastructure

SB 28 and SJR 75 by Perry
Generally effective September 1, 2023

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SB 28 establishes the Texas Water Fund, the New Water Supply for Texas Fund, and the Statewide Water Public Awareness Account to be administered by the Texas Water Development Board (TWDB).

Texas Water Fund. The bill establishes the Texas Water Fund as a special fund in the state treasury outside the general revenue fund and administered by TWDB. TWDB must ensure that a portion of the money transferred from the fund is used for:

- water infrastructure projects, prioritized by risk or need;
- projects for which all required state or federal permitting has been substantially completed;
- the Statewide Water Public Awareness Program;
- water conservation strategies; and
- water loss mitigation projects.

The fund may be used only to transfer money to:

- the Water Assistance Fund;
- the New Water Supply for Texas Fund;
- the State Water Implementation Fund for Texas;
- the State Water Implementation Revenue Fund for Texas;
- the State Water Pollution Control Revolving Fund;
- the Rural Water Assistance Fund;
- the Statewide Water Public Awareness Account;
- the Texas Water Development Fund II Water Financial Assistance Account; and
- the Texas Water Development Fund II State Participation Account.

The fund also may be used to pay necessary and reasonable expenses of its administration, not to exceed two percent. The bill also establishes provisions for the fund's investment by the Texas Treasury Safekeeping Trust Company.

TWDB may not transfer money from the fund into any such fund or account for an authorized purpose until the applicable project has been approved. The bill authorizes TWDB to adopt rules providing for the use of money in the fund, which must require each recipient of financial assistance from the fund to submit a water conservation plan.

SB 28 requires the State Water Implementation Fund for Texas Advisory Committee to submit comments and recommendations to TWDB regarding the use of money in the Texas Water Fund and to review the overall operation, function, and structure of the fund at least once per year. The committee is prohibited from recommending specific projects for Texas Water Fund financial assistance.

Provisions on the Texas Water Fund take effect January 1, 2024.

New Water Supply for Texas Fund. The bill creates the New Water Supply for Texas Fund as a special fund in the state treasury, administered by TWDB. TWDB must use the fund to finance projects that will lead to seven million acre-feet of new water supplies by December 31, 2033. The fund may be used to:

- provide financial assistance to political subdivisions to develop water supply projects that create new water sources for the state, including desalination, produced water, aquifer storage and recovery, and water transportation infrastructure;
- make transfers to the State Water Implementation Fund for Texas or to the Texas Water Development Fund II; and
- make transfers to the Water Bank Account under applicable provisions of law.

The bill requires TWDB to adopt rules to administer the fund, including rules establishing procedures for the application, award, and distribution of financial assistance.

The bill also specifies factors that TWDB must consider when evaluating or approving an application for financial assistance. Financial assistance may not be provided for the maintenance or operation of an eligible water supply project. The repayment of principal or interest on a loan made from the New Water Supply for Texas Fund must be deposited to the credit of the Texas Water Fund.

Statewide Water Public Awareness Account. SB 28 establishes the Statewide Water Public Awareness Account as an account in the general revenue fund. The account may be used by TWDB to develop, administer, and implement the Statewide Water Public Awareness Program to educate Texas residents about water. The bill also renames the Statewide Water Conservation Public Awareness Program to the Statewide Water Public Awareness Program and makes conforming changes.

Technical assistance for retail public utilities. TWDB is required to establish a program to provide technical assistance to retail public utilities in conducting required water audits and in applying for financial assistance to mitigate the utility system's water loss. TWDB must prioritize technical assistance to utilities based on certain water loss, population served, and integrity factors. TWDB also must post summaries of information included in the water audits and the measures taken by utilities to reduce water loss and must identify the utilities participating in the program and their use of financial assistance on its website.

SJR 75 amends the Texas Constitution to create the Texas Water Fund as a special fund in the state treasury outside the general revenue fund to be administered by TWDB or its successor. The joint resolution authorizes TWDB to restore to the fund money transferred from the fund into another account. Legislative appropriation is not required for TWDB to transfer money from or restore money to the fund, including the transfer of money from the fund to or the restoration of money from:

- the Water Assistance Fund No. 480;
- the New Water Supply for Texas Fund;
- the Rural Water Assistance Fund No. 301; or
- the Statewide Water Public Awareness Account.

TWDB is required to allocate at least 25 percent of the money initially appropriated to the Texas Water Fund to be used only for transfer to the New Water Supply for Texas Fund.

For the purposes of constitutional restrictions on the rate of growth of appropriations, the resolution establishes that money in the fund is dedicated by the constitution and that an appropriation of tax revenues deposited to the fund is treated as if it were an appropriation of revenues dedicated by the constitution. Any unexpended and unobligated balance remaining in the fund at the end of a state fiscal biennium must be appropriated to TWDB for the following state fiscal biennium for purposes authorized by the resolution.

The proposed constitutional amendment was approved by voters on November 7, 2023.

Supporters said

SB 28 and SJR 75 would provide necessary funding to help meet Texas' growing water needs and ensure that Texans have access to safe, clean, and affordable water into the future. The state has a critical need for new water infrastructure. Existing water infrastructure is insufficient, with utilities estimated to be losing more than 135 billion gallons of water per year due to leaking pipes. Aging and deteriorating water systems are expected to decline significantly over the next few decades, which could cause water shortages. At the same time, water demands are anticipated to continue increasing due to the state's rapid population growth. The constitutional amendment and its enabling legislation would provide critical investments in Texas' water infrastructure and supply. The surplus in this biennium's budget provides an exceptional opportunity to fund essential water infrastructure restoration and expansion for future generations.

Although the bill would allow funding to be used for produced water and water desalination projects, SB 28 would not pose public safety risks because it would not exempt these water sources from existing water safety regulations. Under the bill, water reuse and nature-based solutions also could qualify for funding if TWDB determined that they would create new water sources for the state. The bill would prioritize funding water systems in rural areas, where the majority of the state's water pipes are located, but which lack the necessary tax base to finance water projects independently.

Critics said

SB 28 would fund potentially unsafe water projects such as those that reused the oil byproduct "produced water," which may have public health risks that are not yet fully understood. The bill also would permit funds to be allocated for water desalination. Texas currently lacks the regulatory capability to guarantee adequate protection of the state's bays, estuaries, and marine life if desalination

projects were pursued. Although it is imperative to restore and expand Texas' water systems, the bill should focus more explicitly on water reuse and nature-based solutions to maintain and enhance water supplies.

In addition, the bill should prioritize supporting projects that conserve water and increase the efficiency of existing water systems to reduce the need for new water supplies. The bill's goal of seven million acre-feet of new water would be unrealistic and could undercut efforts to mitigate water loss in existing water infrastructure.

SB 28 also should prioritize funding economically distressed areas to protect Texas' most vulnerable communities, particularly communities of color, many of which lack safe and sustained access to drinking water.

Other critics said

The $1 billion appropriation to the Texas Water Fund in the fiscal 2023 supplemental budget would fall short of the estimated long-term costs of meeting Texas' water needs, which some estimate to be tens of billions of dollars in the coming decades. The Legislature should invest significantly more money into the state's future water supply needs.

Notes

The HRO digests of SB 28 and SJR 75 appeared in the May 16 *Daily Floor Report*.

SB 30 by Huffman, the supplemental budget for fiscal 2023, appropriates $1 billion from the general revenue fund to the Texas Water Fund.

Another constitutional amendment, HJR 169 by Clardy, also would have created a Texas Water Fund, but died in the Senate. The HRO digest of HJR 169 appeared in the May 8 *Daily Floor Report*.

Establishing renewable energy generation facility permits

SB 624 by Kolkhorst
Died in the House

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SB 624 would have created renewable energy generation facility permits issued by the Public Utility Commission of Texas (PUC). A person would not have been allowed to interconnect a renewable energy generation facility with a capacity greater than 10 megawatts to a transmission facility without PUC approval or a PUC-issued permit. Under the bill, a "renewable energy generation facility" would have been defined as a wind or solar power facility, and a "person" would have included an electric cooperative and a municipally owned utility. The bill would not have applied to a solar power facility in the corporate boundaries of a home-rule municipality.

A person who interconnected a renewable energy generation facility to a transmission facility before September 1, 2023, would have had to apply for a permit only if the person increased the amount of electricity generated by five megawatts or more, or if the person materially changed the placement of the facility.

Permit conditions. The bill would have required PUC to prescribe the conditions under which a permit could be issued, including facility boundaries, the maximum number of facilities authorized, and certain monitoring and reporting requirements. The bill also would have required a permit holder for a solar power facility to ensure that all facility equipment was located at least 100 feet from any property line and at least 200 feet from any habitable structure. A permit holder for a wind power facility would have had to ensure that all equipment was located at least 3,000 feet from the property line of each property bordering the facility property. These requirements would have applied unless the permit holder obtained a written waiver from each owner of a property or structure within the restricted range.

A permit holder also would have been required to provide a website that displayed certain items, including a map of the boundaries of the permitted facility, any interconnection request numbers assigned to the facility, and the facility owner's name.

Application requirements and review. A person could have applied for a permit by filing certain information about the facility with PUC, including the location, the type of facility, the name of the facility, an environmental impact review, any wind or solar power facility agreements, and the facility's website address.

PUC would have had to require an applicant to:

- provide notice of the application to the county judge of each county located within 25 miles of the renewable generation facility subject to the permit;
- hold a public meeting to obtain input on the proposed permit or permit amendment, with certain exceptions; and
- publish the time and place of the public meeting and a link to a website with certain information about the facility in a general-circulation newspaper in each county in which the facility was or would have been located.

PUC would only have been allowed to approve an application if it found that the issuance or amendment of the permit would not have violated state or federal law and would not have interfered with the stated purpose of the bill. In considering an application, PUC also would have been required to consider the applicant's compliance history.

Environmental impact reviews and fees. In coordination with the Texas Parks and Wildlife Department (TPWD), PUC would have been authorized to require a permit holder to:

- monitor, record, and report on environmental impacts created by the permitted facility;
- conduct wildlife assessments and provide the results to TPWD;
- adapt operations based on such a review to minimize facility effects on wildlife; and

- provide PUC and TPWD with other information about the facility's operation.

The bill would have required TPWD to adopt a system meeting federal requirements to provide the environmental impact review to an applicant for a renewable generation facility permit based on materials provided by the applicant.

An annual environmental impact fee would have been imposed on each permit holder and PUC would have been required to adopt a tiered fee schedule. Such fees would have had to be deposited into the Renewable Energy Generation Cleanup Fund, which would have been a dedicated account in the general revenue fund created under the bill.

Supporters said

SB 624 would help protect Texas' wildlife populations and natural resources, protect landowners from the negative impacts of adjacent renewable generation facilities, and increase PUC oversight of an industry in need of greater regulation.

Restrictions on where renewable energy generation facilities may be built are necessary because solar and wind generation takes up more land than oil or gas production and, as such, can be detrimental to wildlife and the environment. For example, wind turbines and solar panels can kill birds and bats, alter the flight paths of endangered species, negatively impact aquifer infiltration, and decimate wildlife habitats. Additionally, these facilities are often built on productive farmland. By requiring an environmental impact review during the application process, the bill would help PUC determine where solar and wind generation facilities should or should not be constructed based on environmental criteria.

Although it would impose restrictions, SB 624 would not discriminate against renewable energy facilities. Renewable energy is an important part of the Texas power grid, but renewable energy facilities benefit from significant tax breaks and subsidies that other types of generation are ineligible to receive. For example, many renewable generation facilities received exemptions from school district taxes under the former Texas Economic Development Act, Chapter 313. As such, the limitations imposed by this bill would place renewable energy on a more even footing with fossil fuels.

By requiring public notice and a meeting before the construction of a facility and allowing nearby landowners to provide input, the bill would address the impact of renewable energy facilities on those who own adjacent property. Wind and solar facilities can be visually unappealing, create water runoff, and, as a result, decrease the value of adjacent property. Although landowners have the right to lease with renewable energy developers on their own land, the property rights of adjacent landowners should be protected as well. SB 624's permit conditions also would help protect rural areas from the negative economic impacts of renewable energy facilities. These facilities may reduce available land for hunting and agriculture, potentially resulting in reduced revenue and job opportunities.

By requiring permits for the construction of new renewable generation facilities and granting PUC greater oversight, the bill would help ensure Texas land was protected. SB 624 would only impose additional oversight where it did not exist, since permits are not currently required for renewable energy generation facilities. The renewable industry requires more supervision to enforce best practices to mitigate its impact on Texas land and resources. Additionally, by exempting solar power facilities within a home-rule municipality, the bill would allow municipalities to continue to regulate these facilities as they deemed necessary.

The bill would only apply to projects built after the effective date, so it would not create difficulties for landowners with existing solar and wind power agreements.

Critics said

SB 624 would institute an onerous permitting process that singled out and placed burdensome restrictions on renewable energy. Although the bill seeks to mitigate environmental impact, this process could harm the environment further by discouraging the construction of new renewable energy generation facilities. Renewable energy facilities emit no greenhouse gasses and use little water, unlike other types of energy generation. In addition, wind turbines kill far less wildlife than windows and power lines, and land with wind turbines can still be used by hunters and animals.

By requiring permitting only for renewable energy facilities, the bill would unfairly target renewables and make it more difficult for developers to build new wind and solar farms. For example, provisions related to offsetting facilities from adjacent property would burden developers of renewable energy generation since oil and gas rigs in Texas can be set up near property lines without

restriction. The bill could tie new projects up in years-long review processes and projects currently in development could be delayed or canceled due to the new requirements.

By increasing PUC oversight of renewables, SB 624 would be an overreach of state government and could undermine a healthy business environment. Since renewable energy is cheaper than fossil fuels, restricting renewables could cause electricity prices to increase. Limiting renewables also could reduce investment in rural Texas since demand for cheap, clean energy is rising among Fortune 500 companies.

In addition, the bill could undermine private property rights and threaten landowners' ability to steward their land as they saw fit. Landowners are in the best position to decide what should happen on their land, and the bill would deprive them of the ability to decide how they earned income on their property.

By disincentivizing renewable facility construction, SB 624 could harm the economies of rural communities. Renewable energy generation facilities provide economic benefits to rural Texans through taxes and predictable revenue for landowners that lease to wind and solar developers. Royalties from these agreements allow many landowners to keep family farms in business and to reinvest in their communities. Additionally, the bill could threaten property tax revenue that many property-poor rural school districts rely on for school funding.

The bill would duplicate state and federal policies for water, land, and wildlife protections and could undermine the federal government's goal of purging carbon emissions by 2035. In addition, many provisions of the bill are often carried out in the industry already, as renewable energy developers frequently seek input from communities where they plan to build new facilities, work with community organizations to understand land history and community activity, and work with parks and wildlife specialists to minimize environmental impact.

Other critics said

The regulations that would be imposed by SB 624 should be applied across the energy industry, including to fossil fuels that typically have a greater environmental impact than renewables. Additionally, notice requirements, setbacks from property lines, and decommissioning obligations should be applied to all kinds of energy generation facilities.

Notes

SB 624 died in the House and did not receive an HRO analysis.

Revised provisions of SB 624 were added as a Senate amendment to HB 1500, which continues the Public Utility Commission until 2029. However, these provisions were removed in conference committee before the passage of HB 1500. The HRO digest of HB 1500 appeared in the April 18 *Daily Floor Report*.

Continuing the Texas Commission on Environmental Quality

SB 1397 by Schwertner
Effective September 1, 2023

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SB 1397 continues the Texas Commission on Environmental Quality (TCEQ) until September 1, 2035, and revises various provisions related to its operations. The bill:

- revises provisions on permit applications and establishes a new standard permit for temporary concrete plants;
- revises classification criteria for repeat violators and increases certain penalties;
- requires the development of a diversion program for small businesses and local governments;
- requires the review of environmental flow standards and the development of a corresponding work plan and timeline; and
- adopts the Sunset Advisory Commission's across-the-board recommendations on member training requirements and the separation of commission and staff responsibilities.

Permits. SB 1397 establishes provisions on permit applications and creates a temporary concrete plant permit.

Electronic posting of permit applications. Once a permit application for a program administered by TCEQ becomes administratively complete, TCEQ is required to post the application and any associated materials, including any maps accompanying the application, on its website. If a permit application is revised or amended after the application becomes administratively complete, TCEQ must post the revised or amended application on its website, though certain application materials may be exempt if TCEQ determines that they are unduly burdensome or too large to post.

TCEQ must require each applicant for a permit, permit amendment, or permit renewal that requires a published notice to include in the notice the website where the public may access information about the permit. TCEQ also must require that each public notice issued or published by the commission or by a person under its jurisdiction include, to the extent applicable, the name of the permit applicant, the type of permit applied for, and the location of each proposed or existing site subject to the proposed permit.

Air, waste, and water permits. SB 1397 requires TCEQ to publish notice of a permit application for an air, waste or water program under its jurisdiction on its website, and TCEQ may provide additional electronic notice through other means. Such notices are in addition to any other notice requirement. TCEQ also would be required to consider and accommodate residents of each area affected by a proposed permit, permit amendment, or permit renewal who may need assistance accessing permit materials because of a lack of access to the internet.

The bill also requires certain applicants to verify publication of a notice in a newspaper and that TCEQ send notice of permit applications for which public notice is required to applicable state officials. Additionally, TCEQ may request that a permit applicant provide security at a public meeting or hearing about the permit.

A person with a temporary or indefinite term permit who does not have a regular reporting requirement is required to annually report to TCEQ whether the activity subject to the permit is ongoing. The first reports required under this provision are due on or before December 31, 2024.

TCEQ is required to provide outreach and education to the public on participating in the permitting process for air, waste, and water programs within its jurisdiction.

Temporary concrete plant permits. SB 1397 requires TCEQ to issue a standard permit for a temporary concrete plant that performs wet batching, dry batching, or central mixing to support a public works project. Plants that receive a temporary permit:

- may not support a project unrelated to the public works project.

- must be located in or contiguous to the right-of-way of the project; and
- may occupy a designated site for no more than 180 consecutive days or to supply material for a single project.

Repeat violators and penalties. In classifying a person's history of compliance with regulations under TCEQ's jurisdiction, SB 1397 requires TCEQ to set the number of major, moderate, and minor violations that the person must commit to be classified as a repeat violator. The executive director may review, suspend, or reclassify a person's compliance history under certain circumstances. The bill also increases the maximum penalty for violations from $25,000 per day to $40,000 per day if:

- the violation involves a release of pollutants that exceed levels that are protective of human health;
- the violation involves certain unauthorized activities that deprive others of water, affect aquatic life, or result in a safety hazard, property damage, or economic loss;
- the person previously committed a violation of the same nature that resulted in the assessment of an administrative penalty; and
- the commission determines that the person could have reasonably anticipated and avoided the violation.

Small business and local government enforcement diversion program. Under the bill, TCEQ is required to establish an enforcement diversion program for small businesses and local governments that includes:

- resources developed for the existing small business compliance assistance program;
- compliance assistance training; and
- on-site technical assistance and training performed by commission staff.

Before TCEQ initiates an enforcement action for a violation committed by a small business or local government, TCEQ may enroll the relevant entity into the enforcement diversion program. TCEQ may not enroll a small business or local government into the diversion program if an enforcement action against the entity is required under federal law. TCEQ also may not take enforcement action against such an entity for a violation that prompted enrollment in the program after the entity has successfully completed the program. A small business or local government is not eligible to enroll in the diversion program if it has committed a violation that resulted in an imminent threat to public health, committed a major violation as determined by TCEQ, or was enrolled in the program in the two years preceding the date of the violation.

Environmental flow standards review. SB 1397 requires the Environmental Flow Standards Advisory Group to periodically review the environmental flow standards for each river basin and bay system adopted by TCEQ. The bill sets forth requirements for each review and requires the advisory group to transmit completed reviews and corresponding recommendations to the commission for use in adopting rules. The advisory group also must develop a biennial statewide work plan to prioritize and schedule the required review of flow standards. The first statewide work plan from the advisory group is due by January 1, 2025.

TCEQ must consider the advisory group review when altering an environmental flow standard or set-aside and when establishing the schedule for rules review related to each standard or set-aside. TCEQ also is required to submit a biennial report to the advisory group on the implementation and effectiveness of environmental flow standards. The first biennial report is due by January 1, 2024.

The bill repeals provisions that required the abolishment of the advisory group and the Environmental Flows Science Advisory Committee once the commission adopted environmental flow standards. The bill also repeals provisions requiring the abolishment of the Basin and Bay Expert Science Team upon the abolishment of the advisory group.

Best management practices. TCEQ is required to develop and make available on its website recommended best management practices for aggregate production operations under its jurisdiction, which must include operational issues related to dust control, water use, and water storage. TCEQ may coordinate with other agencies in developing best management practices, and the practices are not subject to enforcement by the commission.

Water districts. The bill requires TCEQ to send a notice of receipt of an application for the creation of an applicable water district that requires public notice and hearing to the applicable state officials representing an area inside a proposed district's boundaries.

Supporters said

SB 1397 would improve the transparency and enforcement ability of the Texas Commission on

Environmental Quality (TCEQ) by requiring more thorough communication with the public about its activities and by updating its compliance monitoring and enforcement processes.

The changes proposed in the bill to require community outreach and education on the permit process, ensure online posting of all permit applications, and other management recommendations in the Sunset report would provide opportunities for stakeholders and communities to engage more meaningfully in the permitting process. These steps would help to restore trust in TCEQ's work and update certain outdated processes.

Increasing fines for repeat violators would help deter facilities that may be slow to change practices that violated pollution or water removal regulations. The bill also would consider the severity of a violation when classifying repeat offenders. Requiring TCEQ to revise the criteria for classifying an organization as a repeat offender and providing the corresponding ability to update an organization's compliance history to reflect the new classification would improve consistency in monitoring regulated entities and would more effectively hold violators accountable.

The enforcement diversion program would prevent formal enforcement action against organizations that were interested in remedying violations of laws under TCEQ's jurisdiction or that made a clerical error that did not endanger human or environmental health. Additional training offered through the program would help organizations better understand state regulations and reporting requirements, which could improve compliance and reduce pollution.

Given the connection between surface waters and groundwater, the review of environmental flow standards and adherence to a review schedule required under the bill would increase oversight and help ensure standards remained relevant to better protect the health of Texas' scarce water resources.

Critics said

SB 1397 should do more to improve TCEQ's ability to enforce environmental regulations and hold polluters accountable, which would help to improve public trust. Penalties should be revised to better reflect the type and severity of the violation that occurred and to ensure that administrative errors did not receive the same penalties as violations that threatened public health. Additionally, TCEQ should be required to take the concerns of all stakeholders, including those with non-property interests, into consideration when processing a permit to ensure that important voices were not left out of the process. Those who use Texas waterways for commercial fishing and recreation also should have an opportunity to provide testimony at a permit hearing for a facility that could impact the waters they use.

The federal Environmental Protection Agency (EPA) is currently informally reviewing TCEQ regulations, processes, and practices to ensure they align with federal requirements, including who has standing to request a judicial review of a permit decision. The Legislature could address this issue in the bill to ensure that federal program funding would not be jeopardized if the EPA were to make a formal decision about the policy.

TCEQ also should be required to consider the cumulative effects of polluters in close proximity to each other by evaluating the number and type of polluters in a proposed permit area to determine the concentration of polluters as well as the current and potential impacts to community health.

The protection of environmental flows through applicable standards is an essential TCEQ function and final decisions about these standards should be left to the commission rather than to members of advisory boards, who may not be scientists or subject matter experts. TCEQ's mission statement also should be revised to eliminate the phrase "economic growth" to emphasize environmental impact over business needs.

Notes

The HRO analysis of SB 1397 appeared in the May 16 *Daily Floor Report*.

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*Finally approved

Creating education savings accounts, amending school finance

HB 1 by Buckley, Fourth Called Session
Died in the House

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HB 1 would have established an education savings account program to provide money to parents and children to pay for private school tuition and certain other approved education expenditures. The bill also would have increased the basic allotment and established and amended various other school finance provisions.

Education Savings Account Program. HB 1 would have required the comptroller to establish an Education Savings Account (ESA) program to provide funding for approved education-related expenses for participating children. The amount of money appropriated for the program for a fiscal biennium could not have exceeded the greater of:

- the amount appropriated for the program for the preceding biennium; or
- the amount necessary to provide the required funds for each participating child and each child on the waiting list on January 1 of the preceding biennium.

Eligibility. A child would have been eligible to participate in the program and could, subject to available funding and the bill's requirements, initially enroll in the program if the child was eligible to attend a public school and:

- either was enrolled in a Texas public school for at least 90 percent of the preceding school year, was enrolling in kindergarten or first grade for the first time, or attended a full-time private school or was home-schooled for the preceding school year; or
- was a sibling of an eligible child who was participating in the program or applied to enroll in the program for the same school year in which the sibling applied.

Subject to available funding, an eligible child could have participated in the program until the earliest of certain dates established in the bill, including the date on which the child graduated high school or was no longer eligible to attend a public school. Additionally, a child would become ineligible for the program if the child failed to perform satisfactorily for two consecutive years on a required assessment instrument.

A child of a state representative or state senator would not have been eligible to participate in the program while the child's parent was in office.

Application to program. The bill would have allowed a parent of an eligible child to apply to a certified educational assistance organization to enroll the child in the program for the following school year. An organization could have applied to the comptroller for certification as a certified educational assistance organization, and the bill would have established eligibility criteria. If a certified educational assistance organization received more acceptable applications during an application period than available program positions, the organization would have been required to prioritize applicants who had not ceased prior program participation over children who had ceased program participation by enrolling in a public school.

Applicants would have then been prioritized by:

- children with a disability who were members of a household with a total annual income that was at or below 400 percent of the federal poverty guidelines;
- children who were members of a household with a total annual income that was at or below 185 percent of the federal poverty guidelines;
- children who were members of a household with a total annual income that was above 185 percent and below 400 percent of the federal poverty guidelines; and
- children who were members of a household with a total annual income that was at or above 400 percent of the federal poverty guidelines.

Participation requirements and assessments. To receive program funding, a participating parent would have been required to agree to:

- spend program money only for certain allowed expenses;
- ensure the administration of assessment instruments to the participating child in accordance with statute and share the results with the child's educational assistance organization;
- refrain from selling an item purchased with program money while the child was participating; and
- notify the applicable organization no later than 30 days after the child enrolled in a public or charter school, graduated high school, or was no longer eligible to enroll in a public school.

Money received under the program could have been used only for certain education-related expenses incurred by a participating child at an education service provider or vendor of educational projects that was preapproved by the comptroller based on certain criteria. A learning pod or home school would not have qualified as a provider or vendor. Money received under the program could not have been used to pay any person who was related to the program participant within the third degree of consanguinity.

Texas Eduation Agency (TEA) would have been required to ensure that each participating child was annually administered each assessment instrument required to be administered to an equivalent public school student or a nationally norm-referenced assessment instrument that equivalently assessed student performance.

Payments and administration of accounts. Regardless of the deadline by which the participating parent applied for program enrollment, a parent would have received payments from the state each school year that the parent's child participated in the program. Payments would have been held in trust for the benefit of the child from available program funds to the child's account administered by a certified educational assistance organization equal to 75 percent of the estimated statewide average amount of funding per student in average daily attendance for the applicable school year. Such a payment could not have been financed using federal money or money from the available school fund or instructional materials fund. A participating parent would have had to submit all payment requests for expenses incurred during a fiscal year to the comptroller not less than 90 days after the end of that fiscal year. A participating home-schooled student could not have received payments over $1,000 to the child's account for a school year. Any money remaining in a participating child's account at the end of the fiscal year that was not obligated for expenses incurred during that fiscal year would have been required to be returned to the comptroller for deposit to the program fund.

The comptroller would have been required to disburse from the program fund to each certified educational assistance organization the payment amount for each participating child for which the organization was responsible. On receipt of funds, an organization would have been required to hold the money in trust for the benefit of participating children and make equal quarterly payments to the account of each participating child for which the organization was responsible. Each organization would have been required quarterly to submit to the comptroller a breakdown of the organization's actual costs of administering the program, and the comptroller would have been required to disburse the amount necessary to cover such costs. The total amount disbursed to all organizations for the administration of the program for a fiscal year could not have exceeded 5 percent of the amount appropriated for the program that fiscal year.

Auditing. HB 1 would have required the comptroller to contract with a private entity to audit accounts and program participant eligibility data at least once per year.

Participant, provider, and vendor autonomy. An education service provider or vendor of educational products that received program money could not have been a recipient of federal financial assistance and could not be considered to be an agent of the state government. A rule adopted or other action taken related to the program could not have limited the ability of a provider, vendor, or program participant to determine instruction methods or curriculum, admissions, or employment practices or exercise religious or institutional practices.

Other provisions. The bill also would have established other provisions for the ESA program, including provisions on the program fund, program promotion, suspension of accounts, annual reports from certified educational assistance organizations, prohibition of refunds and charging tuition and fees, and referral of evidence of fraud to a district attorney.

School finance. HB 1 would have established and revised various provisions related to school funding formulas, allotments, and grant programs.

Basic allotment. Beginning September 1, 2024, HB 1 would have revised the basic allotment formula from A = $6,160 x TR/MCR to A = B x TR/MCR, with "B" indicating the base amount. The base amount would have been the greater of:

- $6,700;
- the district's base amount for the preceding school year; or
- a greater amount for any school year provided by appropriation.

For the second year of each fiscal biennium beginning in the 2025-26 school year, HB 1 would have required the education commissioner to adjust the value of "B," or the base amount, in the basic allotment formula for the prior state fiscal year by a factor equal to the average annual percentage increase in the Texas Consumer Price Index for the preceding 10 years.

Property value study hardship grants. HB 1 would have allowed the education commissioner to administer a grant program for the 2023-24 and 2024-25 school years for eligible school districts to offset the funding reduction under the Foundation School Program resulting from the use of the state value, instead of the local value, for the district's taxable property value for the 2022 and 2023 tax years.

Additional state aid for retention stipends. For the 2023-24 school year, school districts and charter schools would have been entitled to state aid to provide a one-time stipend to each eligible district employee. The bill also would have established a formula for determining the amount of state aid based on the number of district or school employees. A district would have received $4,000 for each full-time employee and $2,000 for each part-time employee.

Local revenue level in excess of entitlement. If, after reducing certain school districts' tier one revenue level, the maintenance and operations revenue per student in average daily attendance was less than such revenue available for the 2023-24 school year, TEA would have been required to adjust the amount of the reduction up to the amount of local funds necessary to provide the district with the amount of such revenue available to the district for the 2023-24 school year.

Small and mid-sized district allotment. Beginning with the 2024-25 school year, the bill would have amended the definition of "ADA," or "average daily attendance," for the small and mid-sized district allotment formula to exclude from the definition students in average daily attendance who did not reside in the district and were enrolled in a full-time virtual program. The bill also would have increased the weights in the formulas based on the number of students in average daily attendance in a school district.

Special education allotments. Beginning with the 2025-26 school year, the bill would have revised the formula for special education allotments to multiply the sum of the basic allotment and the small and mid-sized district allotment by a weight in an amount set by the Legislature for the highest tier of intensity of service for which the student qualified, rather than by 1.15. The education commissioner would have been required to define seven tiers of intensity of service for use in determining funding, one of which would have had to address special education students in residential placement. The bill would have revised language to require TEA to ensure, rather than encourage, the placement of students in special education programs, including students in residential placement, in the least restrictive environment appropriate for their needs.

The bill also would have established a special education service group allotment beginning with the 2025-26 school year and provided for special education transition funding for the 2025-26 and 2026-27 school years by allowing the commissioner to adjust weights or amounts for certain special education allotments to ensure compliance with certain federal requirements. In determining the formulas through which school districts received funding under these provisions, the commissioner could have combined funding methods under those sections with the method of funding for the special education allotment as it existed on September 1, 2024. For the 2027-28 school year, the commissioner could have adjusted the weights or amounts set by the Legislature for special education funding.

Other allotments. The bill would have revised provisions on various school funding allotments, including by increasing the weight for a school district's annual compensatory education allotment entitlement for certain economically disadvantaged students for the 2024-25 school year and increasing certain amounts and weights for the teacher incentive allotment for the 2025-26 school year. The bill would have established a fine arts allotment. The bill also would have established and revised provisions for bilingual education, early education, Communities In Schools program expansion, mentor program, and day placement program allotments. The bill would have added certain exceptions to the $5 million annual limit on state funding for rural pathway excellence partnership

(R-PEP) allotments and outcomes bonuses. Additionally, HB 1 would have established provisions on an allotment for certain programs of study and revised provisions on the incentive for additional instructional days and the transportation allotment.

Charter schools. Effective for the 2025-26 school year, the bill would have revised the state funding formula for charter schools by increasing the total amount to which a charter school could be entitled from $60 million to $300 million or a greater amount provided by appropriation. The total amount that could have been used to provide allotments could not have exceeded $108 million for the 2025-26 school year, $156 million for 2026-27, $204 million for 2027-28, and $252 million for 2028-29.

Average daily attendance funding. Beginning with the 2025-26 school year, a district that experienced a decline of more than 5 percent, rather than 2 percent or more, in average daily attendance would have been funded based on an average daily attendance of 95 percent, rather than a maximum of 98 percent, of the actual average daily attendance of the preceding school year. The education commissioner would have been required to adjust the average daily attendance of districts entitled to such funding so that the total cost to the state did not exceed $50 million, rather than an appropriated amount.

Parent-directed services for students receiving special education grants. The bill would have revised provisions on the supplemental special education services program to specify that TEA was required by rule to establish and administer a parent-directed program for certain students receiving special education services. A student to whom TEA awarded a grant under the program would have been entitled to receive $1,500 or a greater amount provided by appropriation.

Other provisions. The bill would have revised provisions on the reduction of maintenance and debt service taxes to support students enrolled in Texas School for the Blind and Visually Impaired or Texas School for the Deaf. It also would have established provisions on alternative language methods for bilingual education.

Teacher salaries, recruitment, and retention. HB 1 would have established and revised provisions on teacher salaries as well as recruitment and retention beginning in the 2024-25 school year.

Teacher salaries and retirement contributions. HB 1 would have replaced the current formula for the minimum salary schedule for classroom teachers or full-time librarians, counselors, or nurses with a schedule for the highest annual minimum salary, rather than the minimum monthly salary, based on years of experience and type of certification. A school district would have been entitled to receive an annual salary transition allotment relative to the number of employees on the minimum salary schedule for applicable school years. By September 1, 2026, the education commissioner, with assistance from the executive director of the Teacher Retirement System of Texas (TRS) and the comptroller, would have been required to provide recommendations to the Legislature to coordinate and improve pension contributions for public school employees.

Teacher recruitment and retention. TEA would have been required to collect certain data on vacant teaching positions from school districts and charter schools for teacher recruitment and retention. The State Board for Educator Certification would have been required to waive its certification examination and application fees for applicants taking the teacher certification examination for the first time.

The bill would have required TEA to establish and administer a grant program to support and expand the use of the local optional teacher designation system and increase the number of teachers eligible for such designation. HB 1 would have added the designations of "acknowledged" and "nationally board certified" for certain teachers to the local optional teacher designation system. TEA also would have been required to develop training for, provide technical assistance to, and provide grants to school districts and charter schools regarding certain strategies and programs to support teacher retention and recruitment.

Under HB 1, the education commissioner would have been required to establish the Texas Teacher Residency Partnership Program to enable qualified educator preparation programs to partner with school districts or charter schools to provide residency positions to eligible student-teachers. The bill would have entitled participating school districts to an allotment for each partnership resident employed.

The bill would have required the commissioner to establish a grant program to reimburse school districts and charter schools that hired a retired teacher with funding for the increased contributions to the TRS associated with hiring the retired teacher.

The bill also would have established provisions on free prekindergarten for teachers' children as well as studying

teacher schedules and time worked. It would have revised or repealed certain other teacher employment provisions.

Special eduation. HB 1 would have established provisions related to special education, including requiring each school district's board of trustees or charter school's governing body to discuss the performance of students receiving special education services in a public meeting at least once a year. TEA also would have been required to adopt and consider in the annual discussion certain performance indicators.

The Health and Human Services Commission, in collaboration with TEA and relevant stakeholders, would have been required to develop and provide to TEA materials on educational residential placement options for certain eligible children. The agency would have had to make the materials available to school districts, which would have been required to provide the materials to parents at a meeting at which residential placement was discussed.

HB 1 would have required the education commissioner to establish grant programs for school districts and charter schools to provide innovative services to students with autism and to increase local capacity to appropriately serve students with dyslexia.

The bill would have established and revised other special education provisions, including support for recruiting special education staff.

Virtual education. HB 1 would have allowed school districts and charter schools to create virtual and hybrid school campuses, programs, and courses. A school district or charter school would have been allowed to operate a full-time virtual or hybrid campus if authorized by the commissioner. The bill would have established provisions on campus authorization, student eligibility, and enrollment criteria.

A student enrolled in a hybrid course, virtual course, full-time hybrid program, or full-time virtual program would have counted toward the district's or school's average daily attendance in the same manner as other enrolled students for the purposes of foundation school funding.

The bill also would have established provisions on virtual education related to teacher instructional requirements, the provision of computer equipment or internet service, extracurricular activities, course quality requirements, assessments, tuition and fees, attendance, funding, and private and third-party providers. It would have revised other provisions related to virtual education and repealed provisions on the state virtual school network.

Assessment and accountability. HB 1 would have established a Sunset date of August 31, 2026, for Chapter 39 of the Education Code related to State of Texas Assessments of Academic Readiness, or STAAR tests, and amended certain provisions on school accountability. The bill also would have established provisions on a local accountability grant program and revised provisions on performance indicators and achievement.

Texas Commission on Assessment and Accountability. HB 1 would have established the Texas Commission on Assessment and Accountability to develop and make recommendations for improving public school assessment and accountability systems and adopting a new system as provided for by the Every Student Succeeds Act of 2015. By December 31, 2024, the commission would have been required to deliver a report to the governor and the Legislature recommending statutory changes and funding adjustments necessary to account for student demographics. The commission would have been abolished on January 7, 2025.

Performance ratings and scoring. For the 2023-24, 2024-25, and 2025-26 school years, the bill would have required the education commissioner to use the 2022 Accountability Manual to evaluate school districts and campus performance, assign each school district a performance rating, and score the relevant assessment instruments under Chapter 39. These provisions would have expired August 31, 2026.

Other provisions on public schools. The bill would have established and revised provisions on protections for military dependents, reading intervention programs, and certain grant programs. The bill also would have established provisions on benchmark assessments, supplemental reading instruction, and interlocal contracting between education agencies to procure health insurance. It would have revised provisions on the OnRamps college credit program.

Military dependents. HB 1 would have applied certain provisions of the Interstate Compact on Educational Opportunity for Military Children to:

- a child of a uniformed services veteran who was discharged or released through retirement, for four years after the date of the veteran's retirement,

if the veteran returned to the veteran's home of record on military orders; and
- a child of a uniformed services member who died on active duty or as a result of injuries sustained on active duty, for four years after the member's death.

Reading intervention. The bill would have revised certain provisions to require school districts and charter schools to select from the education commissioner's adopted list of reading instruments. Such reading instruments would have had to include certain foundational literacy components.

A school district or charter school would have been required to provide reading intervention to each student in kindergarten through grade 3 who was determined to need intervention using certain assessments.

Grant programs. The education commissioner would have been required to establish and administer the Prekindergarten Community-based Child-care Partnership Grant Program to support school districts and charter schools in partnering with community-based child-care providers to provide prekindergarten classes.

TEA also would have been required to establish a pilot program to award grants to school districts to implement or maintain a program under which the district provided certain training and career counseling relating to the armed services.

Supporters said

HB 1 would significantly improve education for all Texas students by increasing funding for public schools with a historic investment of over $7.5 billion this biennium. The bill also would provide teachers with a much-needed salary increase and empower parents to choose the best public or private education options for their children through Education Savings Accounts (ESAs).

Education Savings Account program. The ESA program would empower parents to pursue the education that was best for their children. Some parents may prefer an educational environment with a curriculum that better aligns with their family's values or has smaller class sizes with more student-teacher interaction, which a public school may not be able to provide. The ESA program would grant more Texas students access to high-quality education by allowing parents to pay for private school tuition as well as tutoring, textbooks and computers, child care, or educational therapy using money from the program. The per participant amount proposed by the bill for each ESA would be aligned with the average private school tuition cost in the state.

Some private schools specialize in serving students with special needs, and ESAs could help students with disabilities access these options if their public school was not meeting their needs. ESAs would especially help low-income families who could not afford to homeschool or send their children to a private school, or who were working multiple jobs to pay for educational services for their child. The bill would prioritize low-income students and students with disabilities to ensure ESAs served students and families with the highest need.

An ESA program could foster a more competitive environment for public schools, which could promote innovation. This could benefit all Texas public and private school students and increase accountability for the state's public schools.

Participating private schools would be held accountable because HB 1 would require those schools to be accredited and to administer certain assessments. Additionally, schools would be held accountable by the parents, who could choose another option if a private school was not serving their child. By requiring comptroller approval of educational product vendors, the bill also would guarantee that vendors were held accountable. ESA recipients could only use program money for certain approved educational expenditures.

School funding. The bill would increase funding for the Basic Allotment, which would give more money to schools and provide for increases in teacher pay. The Basic Allotment increase would benefit all public school districts, including rural districts where additional funding could make a major difference. Additionally, the bill would include up to $50 million annually to ensure that if a school district experienced more than a 5 percent decline in average daily attendance, the district would be funded based on 95 percent of the previous year's average daily attendance.

Teachers should receive better compensation for the crucial services they provide, and increased teacher pay would help schools retain more high-quality educators amidst teacher shortages. To this end, the bill also provides a $4,000 across-the-board pay bonus for all full-time teachers. By increasing the teacher incentive allotment, higher-performing teachers also would be granted

additional compensation.

The bill's increased small and mid-sized district allotment would expand funding for smaller and economically disadvantaged schools. Expanding the early education allotment and establishing the Prekindergarten Community-based Child-care Partnership Grant Program would help fund and provide more early childhood education services.

Virtual education. The virtual education provisions of the bill would allow students to access educational opportunities they might not otherwise be able to receive by formally adopting the 2022 recommendations of the Virtual Education Commission.

Assessment and accountability. By including an expiration date for Chapter 39 and establishing the Texas Commission on Assessment and Accountability, the bill would encourage an expedited resolution to the many concerns people have regarding the current public school accountability system and STAAR tests.

Critics said

The increases to school funding under HB 1 would not be sufficient to support Texas public schools and the ESA program would ultimately hurt public schools and students in Texas.

Education Savings Account program. The ESA program would harm public education and Texas students by allowing taxpayer dollars to be used for private education and diverting resources from public schools. Private schools are not accountable to taxpayers in the same way as public schools and are not required to provide the same services or administer the same assessments. Diverting state money to private schools would weaken public school funding because the Basic Allotment for a given public school would decrease if ESAs caused public school students to transfer to private schools. Particularly in sparsely-populated rural districts, the loss of any students could significantly impact funding, and rural areas that did not have easy access to private schools would not benefit from ESAs.

Additionally, the ESA amount would not be enough to cover the tuition of many private schools, particularly those of the highest quality. Since there would be no funding cap on the program after the first biennium, the program could become overly expensive for the state if it was expanded in the future.

An ESA program is unnecessary, as publicly-funded schools already offer choices to Texas parents and students through charter schools, magnet schools, and other specialized programs. Students with disabilities also have access to funds for additional special education services and resources through the Supplemental Special Education Services (SSES) program.

ESAs could potentially lead to more separation in schools based on race, ethnicity, native language, or special needs. While some suggest that ESAs would help low-income students access private education, low-income parents may be working multiple jobs and may not have enough time to facilitate their child's participation in the program. The bill would not guarantee that disadvantaged students received ESA benefits because, although it would prioritize low-income students and students with disabilities if more applications were received than available ESAs, it would not require that a certain percentage of low-income students received ESAs. The bill should ensure that ESAs support students and families with the greatest needs, and the program currently would be more likely to help existing private school students.

The bill also would not provide meaningful help for students with special needs through the ESA program, as private schools are not required to serve students with disabilities or provide special education services. As it stands, there are not enough private schools that serve special needs students to meet the growing population of special education students in Texas. More funding for public schools would be a better way to help special education students receive the services they need.

HB 1 would not provide sufficient oversight for homeschool curriculum vendors and taxpayer money could be used to pay vendors, that created factually inaccurate educational materials.

Students receiving an ESA should not be penalized for failing to perform satisfactorily on the required assessment test two years in a row by being prevented from participating in the program. Instead, the bill should place accountability for an underperforming student on the school.

School funding. Texas public schools are in critical need of additional funding due to inflation and the fact that many districts are already operating with deficit budgets just to maintain basic functions. The changes made by HB 1 to the Basic Allotment would not increase school funding enough to account for recent inflation. While teacher raises and bonuses provided by the bill are

important, HB 1 would not sufficiently address chronic teacher underpay and shortages.

Information about state supported living centers. The bill should not include the requirement to provide parents with information about state supported living centers for students with disabilities, as this could increase the number of institutionalized children. It would be better to refer parents to local intellectual and developmental disability authorities to receive appropriate resources.

Other critics said

HB 1 would be too large in scope and should be split into multiple bills. A school finance bill should be voted on separately, and an education savings account bill should have to stand on its own merits.

ESAs would not necessarily benefit private schools, as the program could subject private schools to additional regulation requiring them to administer certain standardized tests and dictating how money received from the program was used. High-performing private schools might not see the benefit of participating in the ESA program and could refuse to do so, which would limit the options available to eligible students.

Notes

The HRO bill analysis of HB 1 originally appeared in the November 17 *Daily Floor Report* during the Fourth Called Session of the 88th Legislature.

The Legislature considered other bills related to public school finance and education savings accounts during the 88th regular and special sessions.

HB 100 by K. King, which died in conference committee, would have established provisions related to school funding, including increasing the Basic Allotment and requiring certain increases in teacher compensation. Additionally, the bill would have established provisions on special education funding. The HRO analysis of HB 100 appeared in the April 26 *Daily Floor Report*.

SB 8 by Creighton, which died in the House, would have established an education savings account program and provisions on parental rights and instructional materials. The bill did not receive an HRO analysis.

SB 1474 by Bettencourt, which died in the House, would have established an education savings account program for certain children with disabilities and provisions on special education allotments and grants. The bill did not receive an HRO analysis.

SB 1 by Creighton, Third Called Session, which died in the House, also would have established an education savings account program. The bill did not receive an HRO analysis.

Authorizing and requiring certain public school safety measures

HB 3 by Burrows
Effective September 1, 2023

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HB 3 establishes various provisions related to school safety and security. Among other provisions, the bill authorizes the hiring of armed security officers in schools, requires the Texas Education Agency (TEA) to provide oversight to guarantee compliance with new safety and security measures, and amends requirements for school district multihazard emergency operations plans. It also provides for mental health training for certain district employees.

Office of school safety and security, regional school safety review teams. The bill requires TEA to establish an Office of School Safety and Security and coordinate with the Texas School Safety Center and relevant law enforcement agencies to provide safety-related technical assistance to school districts. HB 3 requires TEA to monitor the implementation and operation of requirements related to school district safety and security, including school district multihazard emergency operations plans and safety and security audits. TEA also must conduct a detailed vulnerability assessment of each school district on a random basis once every four years.

HB 3 requires a regional education service center to act as a school safety resource for school districts and charter schools in its region. The bill also requires the Office of School Safety and Security to establish a school safety review team in each region served by a regional education service center to annually conduct on-site general intruder detection audits of campuses in the region.

A school district must confirm that a person is in the Texas School Safety Center's registry of persons providing school safety or security services before the district may engage the person to provide a school safety or security audit or consulting services.

Armed security officers. HB 3 requires the board of trustees of each school district to determine the appropriate number of armed security officers for each district campus. At least one armed security officer must be present during regular school hours at each campus.

If a board is unable to comply, it may claim a good cause exception from the requirement if noncompliance is due to the availability of funding or qualified personnel. A board that claims a good cause exception must develop an alternative standard with which the district is able to comply. This may include providing a person to act as a security officer who is a school marshal or another school district employee or contractor who has completed certain school safety training and carries a handgun on school premises in accordance with applicable regulations or authorization of the school district.

Security personnel. Under HB 3, the board of trustees of any school district may:

- employ or contract with security personnel;
- enter into a memorandum of understanding with a local law enforcement agency or a county or municipality that employs commissioned peace officers for the provision of school resource officers; and
- for the purposes of providing security personnel, contract with a licensed security services contractor for the provision of a commissioned security officer who has completed certain training required by DPS.

HB 3 removes the requirement that a person authorized by a board of trustees to be employed as security personnel to carry a weapon must be a commissioned peace officer.

Role of persons carrying a firearm on school grounds. A person permitted to carry a firearm on a campus is prohibited from performing the routine law enforcement duties of a peace officer, including making arrests, unless the duty is performed in response to an emergency that poses a threat of death or serious bodily injury to an individual at the campus. This prohibition does not apply to certain commissioned peace officers.

Active shooter response training. HB 3 revises the requirement that a district peace officer or school resource officer complete an approved active shooter response training program to require that such training be completed at least once every four years.

Mental health training. With certain exceptions, a school district must require each district employee who regularly interacts with students to complete a mental health training program designed to provide instruction on the recognition and support of children who experience a mental health or substance abuse issue that may pose a school safety threat. From funds appropriated for the purpose, TEA is required to provide an allotment to each district to assist in complying with this requirement.

A school district must require its employees to complete the mental health training as follows:

- at least 25 percent of employees before the beginning of the 2025-2026 school year;
- at least 50 percent before the beginning of the 2026-2027 school year;
- at least 75 percent before the beginning of the 2027-2028 school year; and
- 100 percent before the beginning of the 2028-2029 school year.

Notification regarding violent activity. TEA must develop model standards for providing notice of violent activity that has occurred or is being investigated at a campus, other district facility, or district-sponsored activity to the parents and guardians of its students. Standards must include electronic notification, provide an option for real-time notification, and protect student privacy.

Student threat assessment reporting. HB 3 adds to provisions on campus threat assessment and safe and supportive school teams to require each campus to establish a clear procedure for a student to report concerning behavior exhibited by another student.

Multihazard emergency operations plans. The bill amends provisions on a school district's or public junior college district's multihazard emergency operations plan to include requirements established by the Texas School Safety Center in consultation with TEA. A plan must be submitted to the center no later than 30 days after the date the center requests its submission. The center must provide written notice to districts with specific recommendations to correct deficiencies in the plan. The bill reduces the time a district has to correct plan deficiencies from six months to three. If a school district is noncompliant, the bill requires the center to issue a written notice requiring the district to hold a public hearing on its noncompliance.

TEA is required to establish guidelines in consultation with relevant agencies and stakeholders for a district's multihazard emergency operations plan to ensure the safety of students and personnel with disabilities or impairments during an emergency situation. These guidelines must be followed by a school district.

Assignment of conservator for noncompliance. HB 3 authorizes the TEA commissioner to assign a conservator if a school district fails to submit any required monitoring, assessments, or audits, comply with applicable safety and security requirements, or address issues raised by TEA monitoring, assessment, or audits.

Student disciplinary records. If a parent or guardian enrolls a child in a public school in a new school district, the parent, guardian, or most recently attended school district must furnish to the new district a copy of the child's record from the previous school, including a copy of the child's disciplinary record and any threat assessment involving the child's behavior. If a child has a threat assessment record, the school must maintain the record until the student turns 24 years old.

School safety funding. HB 3 amends the school safety allotment to entitle a school district to an allotment equal to the sum of the following amounts or a greater amount provided by appropriation:

- $10 for each student in average daily attendance, plus $1 for each student in average daily attendance per every $50 by which the district's maximum basic allotment exceeds $6,160, prorated as necessary; and
- $15,000 per campus.

The bill amends the list of approved uses of such school safety allotment funds and establishes provisions for TEA-approved school safety technology vendors.

A campus that provides only virtual instruction or utilizes only facilities not subject to the district's control is not included for the purpose of determining the allotment.

The proceeds of bonds issued by school districts for the construction and equipment of school buildings and the purchase of necessary sites for school buildings may be used to pay the costs associated with complying with school safety and security requirements for facilities. Additionally, the education commissioner may authorize

a school district to use grant money or any other funding provided to the district to improve school safety and security.

Emergency response map and walk-through. HB 3 requires each school district and charter school to provide to the Department of Public Safety and all appropriate local law enforcement agencies and first responders an accurate map of each district campus and school building and an opportunity to conduct a walk-through of each campus and building using the map.

Facilities standards. Each school district is required to ensure that each of its facilities complies with school facilities standards. A district must develop and maintain documentation of the implementation of and compliance with these standards. If a district cannot bring a facility into compliance, the district may claim a good cause exception under certain conditions.

Once every five years, the Texas School Safety Center is required to review the standards for instructional facilities and make necessary recommendations for changes to the commissioner of education.

Resources on safe firearm storage. The Texas School Safety Center, in collaboration with DPS, must provide to each school district and charter school information and other resources about the safe storage of firearms. Each school district or charter school must provide this information to the parent or guardian of each enrolled student.

School visitors. The bill revises provisions on school visitors to allow a school district to require a person who enters the property under the district's control to display the person's district employee or student identification card. A district may eject a person from its property if the person refuses or fails to provide required identification on request and if it reasonably appears that the person has no legitimate reason to be on district property.

School safety meetings. HB 3 requires the sheriff of a county of less than 350,000 people to call and conduct semiannual meetings to discuss school safety-related topics. The sheriff of such a county in which multiple public schools are located is only required to hold one semiannual meeting.

Supporters said

HB 3 would address inadequate school safety and security standards that currently exist in Texas by providing public schools with improved emergency preparedness and response measures and allocating more school safety allotment funding to districts to ensure they could meet and implement the new standards. Poor safety procedures, a lack of communication during an emergency response, and outdated or unenforced emergency operation standards have contributed to the severity of incidents of violence in Texas public schools. HB 3 would address these issues by establishing a new standard of emergency preparedness and response while ensuring adequate funding for school safety. The bill also would ensure that more schools had access to armed officers and other security personnel to better provide school safety.

New requirements for district multihazard emergency operations plans established by the bill would help schools to better prepare for possible emergency incidents. TEA also would be allowed to conduct safety audits to test if schools were compliant, and the bill would provide measures to address noncompliant schools and ensure those schools prioritized the safety of their students.

Critics said

HB 3 would not necessarily make schools safer and could even make them more dangerous by increasing the presence of firearms in schools. The regular presence of police in schools may not reduce school violence and could undermine student success and feelings of safety and belonging if officers were more involved in student discipline for ordinary misbehavior.

The funding allocated by the bill would be insufficient to actualize its provisions. Additionally, school safety funding should instead be used to provide more teachers and support professionals, including counselors, for students, as well as better de-escalation training and threat assessment processes. The bill should focus on the root causes of targeted violence in schools and provide more robust mental health support for students. Noncompliant schools should not have grant funding withheld, as this could hurt a school's ability to operate and would not improve safety.

Notes

The HRO analysis of HB 3 appeared in the April 24 *Daily Floor Report*.

HJR 1, by K. King Fourth Called Session, and its enabling legislation, HB 2, would have established grant programs for school safety and school safety plans. The

resolution and the bill died in the Senate Education Committee. The HRO analysis of HB 1 and HB 2 appeared in the November 17 *Daily Floor Report*.

SB 5, by Huffman Fourth Called Session, was passed by the Senate and would have increased the school safety allotment and established a school safety grant program. The bill died in the House and did not receive an HRO analysis.

Revising junior college funding, establishing a financial aid program

HB 8 by VanDeaver

Generally effective September 1, 2023

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HB 8 repeals certain provisions on success-based funding recommendations for public junior colleges and establishes the Public Junior College State Finance Program, the Financial Aid for Swift Transfer Program, and other provisions on public higher education.

Public Junior College State Finance Program. HB 8 creates the Public Junior College State Finance Program consisting of:

- a base tier of state and local funding that ensures each public junior college has access to a defined level of base funding for instruction and operations; and,
- a performance tier of state funding that constitutes the majority of state funding and is distributed based on measurable outcomes aligned with regional and state workforce needs and goals.

The Texas Higher Education Coordinating Board (THECB) must require each junior college district to report to THECB data necessary to calculate funding, provide timely data and analyses, administer or evaluate the effectiveness of the program, or audit the program.

THECB also is required to establish a standing advisory committee composed of public junior college representatives to provide advice and counsel to THECB with respect to the funding of public junior colleges.

Base tier funding. The bill establishes that the amount of base tier funding to which a junior college district is entitled is equal to the amount by which a district's guaranteed instruction and operations funding exceeds the district's local share of base tier funding.

A district's guaranteed instruction and operations funding for a fiscal year is equal to the sum of:

- the product of the district's basic allotment and the number of weighted full-time equivalent students enrolled; and
- the district's contact hour funding.

A district's basic allotment for a fiscal year is an amount per weighted full-time equivalent student set by the General Appropriations Act or other legislative appropriation.

The bill requires THECB to establish student weights that reflect the higher cost of educating certain students. The established student weights must result in appropriate funding to a district for the education of a student enrolled in an eligible program who is 25 years old or older, economically disadvantaged, or academically disadvantaged.

The number of weighted full-time equivalent students enrolled at a junior college district must be equal to the sum of the number of full-time equivalent students enrolled in the district plus the sum of the weights assigned to the district's students.

THECB is required to establish an equitable adjustment to the number of weighted full-time equivalent students for each district with a total enrollment of fewer than 5,000 full-time equivalent students. Each year, a district that receives such an adjustment is required to submit a report to the commissioner of THECB on the district's participation in partnerships and services to reduce costs and improve operational efficiency.

The amount of funding per contact hour must be weighted by discipline to reflect the cost of providing the applicable course. THECB is required to determine the total amount of contact hour funding for each district.

A district's local share of base funding is equal to the sum of estimated revenue from imposing a $0.05 maintenance and operations property tax and an amount of tuition and fees for the district's full-time equivalent students equal to the statewide average for such students, as assessed by junior college districts.

Performance tier funding. HB 8 establishes performance tier funding for junior college districts based on the district's achievement of certain measurable outcomes. A district's performance tier funding is equal to the product of:

- the amount set by the General Appropriations Act or other legislative appropriation; and
- the sum of the number of times a given outcome is achieved by the district or the sum of applicable student weights for the students that achieve those outcomes.

The bill defines the applicable measurable outcomes as:

- the number of credentials of value awarded that equip students for continued learning and greater earnings;
- the number of students who earn at least 15 semester credit hours or equivalent and subsequently transfer to a general academic institution or are enrolled in a structured co-enrollment program; and
- the number of students who complete a sequence of at least 15 semester credit hours or equivalent for certain dual credit courses.

Overallocated funds recovery. The bill establishes provisions to recover overallocated funds.

THECB is permitted to review a junior college district as necessary to determine if the district qualifies for each amount it receives under the bill and may establish a corrective action plan or withhold applicable funding if the board determines that a district received an amount to which if was not entitled.

Financial Aid For Swift Transfer (FAST) Program. HB 8 requires THECB and the Texas Education Agency (TEA) to jointly establish the Financial Aid for Swift Transfer (FAST) Program to allow eligible students to enroll at no cost in dual credit courses at participating higher education institutions. A student is eligible to enroll at no cost in such courses if the student is enrolled in high school and a dual credit course at a participating institution and is educationally disadvantaged at any time during the four school years preceding the student's enrollment in the dual credit course. A higher education institution is eligible to participate in the program only if it charges tuition less than the amount prescribed by THECB for each of the institution's dual credit courses.

The bill establishes certain requirements for school districts or charter schools, higher education institutions, TEA, and THECB for determining and verifying a student's eligibility and enrollment in the program.

A higher education institution participating in the FAST program is entitled to an allotment equal to the amount of tuition for each dual credit course in which an eligible student is enrolled.

Educational and employment resources. The bill requires THECB to include in the information posted on its website requirements for the top 25 highest-demand jobs and the 40 baccalaureate and 20 associate degrees with the highest average wages post-graduation.

THECB also must develop electronic tools or platforms to provide information to assist prospective postsecondary students in assessing the value of a higher education credential program by comparing each institution with other institutions on:

- the relative cost of obtaining the credential;
- the value of the credential;
- the average debt-to-income ratio of students who graduated with the credential;
- progress on repaying student loans by students who graduated with the credential; and
- educational outcomes for students seeking the credential.

The bill allows THECB to partner with employers to analyze job postings and identify employers hiring roles with the skills developed by certain training programs.

Other provisions. The higher education commissioner is required to file with the comptroller and state auditor each year a list of each public junior college in the state that certifies to THECB that the college is in compliance with the bill.

HB 8 establishes the Opportunity High School Diploma Program to provide an alternative means by which adult students enrolled in a workforce education program at a public junior college may earn a high school diploma at the college through concurrent enrollment in a competency-based education program. THECB and the Texas Workforce Commission are required to coordinate to jointly identify funding mechanisms available to public junior colleges and students to encourage and facilitate program participation.

The bill makes certain changes to how state treasury

money is appropriated biennially to supplement local funds for public junior colleges, including removing allocation on the basis of contact hours from these formulas.

Under certain conditions, THECB may authorize a general academic teaching institution to adopt, for each field of study curriculum developed by THECB, a set of courses specific to that field of study that must be completed for a total of at least 6 credit hours. A public junior college, public state college, or public technical institute is required to reward a student a "Texas Direct" associate degree and include an appropriate notation on the student's transcript if the student completes certain curriculum requirements.

The bill repeals certain sections of the Education Code, including provisions on student success-based funding recommendations, the consideration of certain postsecondary industry certifications and workforce credentials, and junior colleges certified by the higher education commissioner.

With certain exceptions, HB 8 applies beginning with the 2023-2024 school year.

Supporters said

HB 8 would modernize the outdated public junior college funding model by prioritizing the education and training that would most benefit a region's and the state's economy. This would position junior colleges to provide the curriculum and programs for certificated and credentialed programs Texas students need to acquire high-quality jobs. Current funding models are enrollment-dependent, and with steady enrollment declines at community colleges, many schools have lost funding critical for their operations. By creating a performance tier of state funding, the bill would better fund junior colleges and encourage these schools to offer instruction for measurable outcomes that aligned with regional and state workforce needs and long-term state goals. The bill also would provide more funding for smaller colleges that dud not receive sufficient operational funding from their limited tax bases and tuition generated by a smaller enrollment.

Additionally, the state's share of funding for junior colleges has shrunk over time. Using an outcomes-based funding formula would allow the state to invest more in these schools by providing incentives for public junior colleges to produce quality graduates to enter the Texas workforce and contribute to the state's growing economy. The bill also would reward colleges for providing credentials of value to students who earn certificates, transfer to four-year institutions, enter the workforce, or join the military. Furthermore, the FAST program established by the bill would give economically disadvantaged high school students new educational opportunities by expanding dual credit offerings.

Critics said

No concerns identified.

Notes

The HRO analysis of HB 8 appeared in the April 11 *Daily Floor Report*.

Prohibiting certain sexually relevant material in public school libraries

HB 900 by Patterson
Effective September 1, 2023

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HB 900 requires school districts to adopt library standards that prohibit certain harmful or sexually explicit material from school libraries and requires library material vendors to issue appropriate ratings regarding sexually explicit and sexually relevant material. The bill creates requirements for the Texas State Library and Archives Commission (TSLAC), the Texas Education Agency (TEA), and school districts and charter schools for the regulation and enforcement of these provisions. The bill applies beginning with the 2023-2024 school year.

Library standards. HB 900 requires TSLAC, in consultation with the State Board of Education, to adopt standards for school library collection development that a school district must adhere to in developing or implementing its library collection development policies. The standards must be reviewed and updated at least once every five years and include a collection development policy that:

- prohibits the possession, acquisition, and purchase of harmful material as defined in state law, library material rated sexually explicit material by the selling library material vendor, or library material that is pervasively vulgar or educationally unsuitable as under certain constitutional precedent;
- recognizes that obscene content is not protected by the First Amendment;
- is required for all library materials available for use or display, including material contained in school libraries, classroom libraries, and online catalogs;
- recognizes that parents are the primary decision makers regarding a student's access to library material;
- encourages schools to provide library catalog transparency;
- recommends schools communicate effectively with parents regarding collection development; and
- prohibits the removal of material based solely on the ideas contained in the material or personal background of the author of or characters in the material.

HB 900 defines "sexually explicit material" as any communication, language, or material, including a written description, illustration, photographic image, video image, or audio file, other than library material directly related to kindergarten through twelfth grade curriculum, that describes, depicts, or portrays sexual conduct in a way that is patently offensive.

The bill also defines "sexually relevant material" as any communication, language, or material, including a written description, illustration, photographic image, video image, or audio file, other than library material directly related to kindergarten through twelfth grade curriculum, that describes, depicts, or portrays sexual conduct.

Parental consent. The bill prohibits a school district or charter school from allowing a student to reserve, check out, or otherwise use outside the school library any library material the vendor rates as sexually relevant material unless the district or school first obtains consent from the student's parent or guardian.

Ratings required. The bill prohibits a library material vendor from selling library materials to a school district or charter school unless the vendor has issued appropriate ratings regarding sexually explicit material and sexually relevant material previously sold to a district or charter school. A vendor may not sell library material rated as sexually explicit material and is required to issue a recall for all copies of such material that is in active use by the district or charter school.

The bill requires each vendor to develop, submit to TEA, and annually update a list of library material rated sexually explicit or sexually relevant sold by the vendor to a school district or charter school in the preceding year that

is still in active use by the district or school.

To determine ratings, a library material vendor must perform a contextual analysis of the library material to determine whether the material describes, depicts, or portrays sexual conduct in a way that is patently offensive. While performing this analysis, a vendor must consider the full context of the sexual conduct portrayed in addition to:

- the explicitness or graphic nature of a description or depiction of sexual conduct contained in the material;
- whether the material consists predominantly of or contains multiple repetitions of depictions of sexual or excretory organs or activities; and
- whether a reasonable person would find that the material intentionally panders to, titillates, or shocks the reader.

TEA review. The bill authorizes TEA to review library material sold by a vendor that is not rated or incorrectly rated by the vendor as sexually explicit material, sexually relevant material, or no rating. The bill establishes a process by which ratings TEA deems inaccurate must be corrected by the relevant vendors.

TEA is required to post and maintain a list of vendors who fail to update the rating and notify TEA on its website. The bill prohibits a school district or charter school from purchasing library material from a vendor on the list. A library material vendor placed on the list may petition TEA for removal from the list. TEA may remove a vendor from the list only if it is satisfied that the vendor has taken appropriate action.

Review and reporting of library materials. By January 1 of every odd-numbered year, HB 900 requires each school district and charter school to:

- review the content of each library material in its library catalog that is rated as sexually relevant material by the vendor;
- determine in accordance with the district's or school's approval, review, and reconsideration of library materials policies whether to retain each reviewed library material in the school library catalog; and
- either conspicuously post a report on its website or provide physical copies of the report at its central administrative building.

The report must include the title of each library material reviewed, the district's or school's decision regarding the material, and the school or campus where the material is currently located.

Supporters said

HB 900 would make necessary changes to school libraries to protect students from inappropriate sexual material. While the protection of freedom of speech should be a priority, obscenity is not protected by the First Amendment and obscene materials do not belong in school libraries. Early access to sexually explicit material can cause unhealthy habits and behaviors that can have lasting effects on youth. Current statutory definitions of harmful and offensive materials have failed to create appropriate guidelines for schools, leaving many inappropriate books on school library shelves. Many school boards have not been responsive to the wishes of parents to protect their children from sexually inappropriate library materials. By requiring parental consent for students to check out certain library materials, the bill also would improve parental control and consent over what children have access to at school.

The bill would not unduly punish schools as the enforcement impetus would largely be placed on the vendors that supplied the materials, and the vendors in turn have ample recourse to petition a TEA decision. Additionally, the bill would not discriminate against any particular group because it would prohibit the removal of books based on the background of authors or characters in the material. Further, the definition of "sexually explicit material" provides an exemption for material directly related to the required curriculum, which would help protect materials such as classics from removal.

Critics said

HB 900 would not adequately define what content was considered "directly related to the curriculum," which could unintentionally prohibit books that would not normally be considered objectionable and lead to First Amendment violations. Additionally, ambiguities in the bill as to what qualifies as appropriate content could be used to ban books that center around protagonists of color, the LGBTQ community, sexual assault survivors, or other marginalized communities. The bill also could allow for standards that limited students' access to recreational reading material, which is important for developing student interest in reading and literary comprehension.

The bill could create impractical bureaucracy for libraries and vendors by giving TEA authority over what constituted appropriate material and adding unnecessary responsibilities for vendors. Smaller vendors may not have the resources to implement ratings under the bill, which could limit vendors available to schools. Many libraries do not currently have the capacity to comply with every provision in the bill and would likely have to invest in new systems. Professional review organizations already provide book ratings on age-appropriateness and reading level that school librarians use in addition to library collection policies that encourage parent engagement and provide an appeals process for books in question to ensure the books in their collections meet the needs of their school communities. Decisions about what constitutes a library collection should primarily be made locally by schools and librarians themselves, who are best qualified to make such decisions.

Notes

The HRO Analysis of HB 900 appeared in Part One of the April 19 *Daily Floor Report*.

Requiring competition in intercollegiate sports based on biological sex

SB 15 by Middleton
Effective September 1, 2023

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SB 15 prohibits an intercollegiate athletic competition sponsored or authorized by a higher education institution from allowing:

- a student to compete on the team in a competition sponsored or authorized by the institution that is designated for the biological sex opposite to the student's biological sex; or
- a male student to compete on the team in a mixed-sex competition sponsored or authorized by the institution in a position that is designated by rule or procedure for female students.

An intercollegiate athletic team may allow a female student to compete in a competition that is designated for male students if a corresponding intercollegiate athletic competition designated for female students is not offered or available.

The bill establishes that a student's biological sex would be the biological sex correctly stated on the student's official birth certificate or, if the birth certificate was unobtainable, another government record that accurately stated the student's biological sex.

A higher education institution or an intercollegiate athletic team may not retaliate against a person for reporting a violation of the bill. A person may bring a civil action for injunctive relief against an institution or athletic team that commits a violation.

The Texas Higher Education Coordinating Board is required to ensure compliance with state and federal law regarding the confidentiality of student medical information when implementing the bill.

Supporters said

SB 15 would protect female athletes in intercollegiate athletic competitions from unfair competition and potential injury by requiring athletes to compete based on their biological sex at birth. Biological men generally have an athletic advantage and allowing them to compete against biological female athletes could put these athletes at a competitive disadvantage or greater risk of injury. Some biological female college athletes have lost competitions or titles to biological men participating against women, which also could jeopardize scholarships or other academic opportunities.

The bill would not prevent anyone from participating in sports privately or from competing in intercollegiate athletics in accordance with the individual's biological sex. While addressing student mental health is important, the bill is focused on fairness and safety for female athletes in competitive intercollegiate athletics, which should not be compromised.

Current National Collegiate Athletic Association (NCAA) and International Olympic Committee (IOC) rules regarding the participation of transgender athletes do not sufficiently account for research demonstrating the physiological advantages of biological males that may not be eliminated by testosterone suppression.

Similar laws in other states have not led to significant legal action and Texas should not refrain from protecting female athletes based on the possibility of litigation.

Critics said

By prohibiting transgender students from competing in intercollegiate athletics based on the gender with which they identify, SB 15 would violate the rights of student athletes in the state and further marginalize transgender Texans.

The bill would only directly impact a small number of individuals, as there are few transgender athletes in college sports competitions nationwide. However, the bill could lead to discrimination against many more transgender college students and negatively impact transgender

students' mental health. The bill would assume that male-to-female transgender athletes have an advantage over cisgender females, which is not necessarily the case for all student athletes.

The NCAA and IOC already have policies to address transgender student athletes and these organizations are best positioned to make decisions about sports fairness and safety.

Other critics said

SB 15 could lead to lawsuits against the state, which could cost the state money that could be better used for other purposes.

Notes

The HRO analysis of SB 15 appeared in the May 17 *Daily Floor Report*.

Prohibiting certain DEI initiatives at public higher education institutions

SB 17 by Creighton
Effective July 1, 2024

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SB 17 prohibits public higher education institutions from engaging in certain diversity, equity, and inclusion (DEI) initiatives, beginning with the spring semester of the 2023-24 academic year. Under the bill, a higher education institution's governing board is required to ensure that each unit of the institution, except as required by federal law, does not:

- establish or maintain a DEI office;
- hire or assign an employee or contract with a third party to perform DEI office duties;
- compel, require, induce, or solicit any person to provide a DEI statement or give preferential consideration to any person based on the provision of a DEI statement;
- give preference on the basis of race, sex, color, ethnicity, or national origin to an applicant for employment, an employee, or a participant in any institution function; or
- require any person to participate in DEI training as a condition of enrolling at the institution or performing any institutional function.

The governing board must adopt policies and procedures for appropriately disciplining, including by termination, an employee or contractor who violates these prohibitions.

The bill defines a "diversity, equity, and inclusion (DEI) office" as an office, division, or other unit of a higher education institution established for the purpose of:

- influencing hiring or employment practices at the institution with respect to race, sex, color, or ethnicity, other than through the use of color-blind and sex-neutral hiring processes;
- promoting differential treatment of or providing special benefits to individuals on the basis of race, color, or ethnicity;
- promoting policies or procedures designed or implemented in reference to race, color, or ethnicity, other than policies or procedures approved in writing by the institution's general counsel and the Texas Higher Education Coordinating Board (THECB) for the purpose of ensuring compliance with an applicable court order or state or federal law; or
- conducting trainings, programs, or activities that advocate for or give preferential treatment on the basis of race, color, ethnicity, gender identity, or sexual orientation, other than trainings, programs, or activities developed by an attorney and approved in writing by the institution's general counsel and THECB for the purpose of ensuring compliance with an applicable court order or state or federal law.

These prohibitions may not be construed to apply to:

- academic course instruction;
- scholarly research or creative works by an institution's students, faculty, or other research personnel or the dissemination of that research or work;
- activities of a student organization registered with or recognized by the institution;
- short-term guest speakers or performers;
- certain programs or activities to enhance student academic achievement or postgraduate outcomes designed and implemented without regard to race, sex, color, or ethnicity;
- data collection; or
- student recruitment or admissions.

A student or employee of an institution who is required to participate in training in violation of the bill may bring an action against the institution for injunctive or declaratory relief.

The bill may not be construed to limit or prohibit a higher education institution or an institution's employee from, for purposes of applying for a grant or complying with accreditation terms by an accrediting agency, submitting to the grantor or agency a statement

that certifies compliance with state and federal antidiscrimination laws or highlights the institution's work in supporting first-generation college students, low-income students, or underserved student populations.

A public higher education institution may provide a letter of recommendation for employment to each employee in good standing whose position is eliminated as a result of the implementation of SB 17.

The bill prohibits an institution from spending money appropriated to the institution for a fiscal year until its governing board submits a report to the Legislature and THECB certifying compliance with the bill during the preceding fiscal year. This provision applies only to funds appropriated for fiscal years after fiscal 2024.

In the interim between each regular session of the Legislature, the governing board of each institution or the board's designee is required to testify before the relevant legislative committees on compliance with the bill.

At least every four years, the state auditor must conduct a compliance audit of each higher education institution to determine if the institution has spent state money in violation of SB 17. If it is determined that an institution has done so, the institution must cure the violation by the 180th day after the determination. If the institution fails to cure the violation, it will be ineligible to receive formula funding increases, institutional enhancements, or exceptional items during the next fiscal biennium.

THECB, in coordination with higher education institutions, must conduct a biennial study to identify the impact of the implementation of SB 17 on certain student enrollment and performance metrics, disaggregated by race, sex, and ethnicity. By December 1 of each even-numbered year, THECB must submit to the Legislature a report on the results of the study. The requirement to submit such reports expires September 1, 2029.

Supporters said

By prohibiting DEI offices and other initiatives in Texas public universities, SB 17 would help restore an academic culture that emphasizes academic rigor, free inquiry, opportunity, and innovation. While a diverse body of students and faculty is desirable for Texas universities, DEI offices often promote specific political beliefs to the detriment of ideological diversity and intellectual freedom on campuses. Prohibiting DEI offices would not limit diversity at universities and could help prevent the political radicalization of Texas students. Despite their original purpose, some DEI initiatives have furthered racially discriminatory or overtly ideological hiring and training policies. The bill would ensure that Texas universities focused on non-discriminatory, merit-based faculty hiring practices as well as merit-based advancement for all students while promoting an ethnically and ideologically diverse student population. Eliminating DEI offices also would result in savings for Texas taxpayers, as these offices would no longer require funding.

SB 17 would prevent harm to any school employees whose positions were eliminated by allowing their institutions to employ them in other offices or provide recommendation letters for positions outside the institution.

Critics said

By eliminating DEI offices, SB 17 would limit diversity among university students and educators and disproportionately harm people of color, LGBTQ individuals, people with disabilities, low-income and first generation college students, and even veterans on college campuses. DEI policies and initiatives help students from marginalized communities feel safe and included and help them thrive in academic environments where they often face additional challenges. The bill would limit access to services and resources that many students use to succeed in college, such as translation services, religious accommodations, gender and sexuality resources, mentoring, and culturally-relevant programming. It is important that Texas colleges and universities can provide resources to meet the needs of diverse students, including by hiring culturally proficient faculty and staff. By helping more students to succeed in college, these programs also strengthen the Texas workforce.

Additionally, prohibiting DEI offices could lead to many high-quality students and faculty seeking to learn or teach at institutions in other states that have maintained DEI offices and related resources. By prohibiting DEI policies that are designed to help students from diverse backgrounds, SB 17 could damage the quality of education at Texas universities and could negatively impact student and faculty recruitment and retention.

Notes

The HRO digest of SB 17 appeared in the May 19 *Daily Floor Report.*

Revising tenure provisions for public higher education institution faculty

SB 18 by Creighton
Effective September 1, 2023

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SB 18 adds provisions on tenure policies and procedures for public higher education institutions. The bill defines "tenure" as the entitlement of a faculty member of a higher education institution to continue in the faculty member's academic position unless dismissed by the institution for good cause in accordance with certain institutional policies and procedures on tenure.

Under the bill, only a higher education institution's governing board, on the recommendation of the institution's chief executive officer and the university system's chancellor, if applicable, is authorized to grant tenure. The granting of tenure may not be interpreted as creating a property interest in any attribute of a faculty position beyond a faculty member's continuing employment.

The bill requires each higher education institution's governing board to adopt policies that allow for the dismissal of a tenured faculty member at any time, after providing the faculty member with appropriate due process, on a determination that there was actual financial exigency, upon the phasing out of the institution's programs requiring the elimination of the faculty member's position, or if there is other good cause as defined by the institution's policies. The policies and procedures regarding tenure also must allow for dismissal if the faculty member has:

- exhibited professional incompetence;
- continually or repeatedly failed to perform duties or meet the professional responsibilities of the faculty member's position;
- failed to successfully complete any post-tenure review professional development program;
- engaged in conduct involving moral turpitude that adversely affects the institution or the faculty member's performance;
- violated laws, university system policies, or institution policies substantially related to the faculty member's performance;
- been convicted of a crime affecting the fitness of the faculty member to engage in teaching, research, service, outreach, or administration;
- engaged in unprofessional conduct that adversely affects the institution or the faculty member's performance; or
- falsified the faculty member's academic credentials.

The policies and procedures for summary dismissal must ensure that the institution provides the faculty member with appropriate due process. The bill specifies certain actions that must be taken as part of this due process.

The bill also requires the comprehensive performance evaluation process to provide a short-term development plan that includes performance benchmarks to return to satisfactory performance for a faculty member who receives an unsatisfactory rating in any area of a relevant evaluation.

The bill repeals a section of the Education Code that requires a faculty member subject to termination on the basis of a performance evaluation to be allowed to refer the matter to a nonbinding alternative dispute resolution process.

Supporters said

SB 18 would help ensure that university faculty who earned tenure uphold their professional and ethical responsibilities and remain accountable to the students and universities that they serve. SB 18 would not limit tenure or affect academic freedom, but rather the bill would protect tenure by codifying tenure policies and procedures and ensuring appropriate due process before a faculty member's dismissal.

Although faculty involvement in the process of granting tenure is not required under the bill, individual

institutions could determine the level of faculty involvement allowed in the process. As evidenced by the success of the Texas A&M system's tenure policies, which are similar to the provisions of the bill, these tenure standards would attract new professors without discouraging high-quality educators from seeking employment in Texas.

The bill would not change the fact that due process was still required prior to termination, and institutions would continue to have financial liabilities for faculty salaries. The reasons for termination constituting good cause under the bill are similar to policies already established by the American Association of University Professors. As the bill would not violate current legal standards, there is no reason to expect lawsuits to result from the bill's passage.

Critics said

SB 18 could limit the academic freedom of faculty provided by tenure, which could impede their ability to challenge students and advance scholarship. The discipline and peer review processes behind current tenure policies help to ensure the sustained high quality of higher education and should not be altered. The bill should require faculty involvement in the awarding of tenure, rather than leaving these decisions to the governing board of an institution. By undermining tenure at Texas universities, the bill also could hinder their capacity to recruit or retain exceptional teaching talent because prospective teachers may be more likely to seek positions in other states. The bill's changes to the definition of property interest for tenured faculty could weaken existing due process protections.

In addition, SB 18 could lead to lawsuits against the state, which could cost the state money that would be better used for other purposes.

Notes

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

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Authorizing property tax reductions, providing state assistance to schools

HJR 2 by Metcalf, Second Called Session
SB 2 by Bettencourt, Second Called Session
Generally effective October 12, 2023

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HJR 2 and its enabling legislation SB 2, the Property Tax Relief Act, amend the Texas Constitution and Tax Code to reduce property taxes and revise provisions related to appraisal boards by:

- increasing the residence homestead exemption from school property taxes from $40,000 to $100,000;
- limiting annual increases in the maximum appraised value of certain non-homestead real property to 20 percent for tax purposes until December 31, 2026;
- establishing that, for a residence homestead subject to a limitation provided in the 2021 tax year or an earlier tax year for an individual age 65 or older or a disabled individual, the Legislature is required to provide a reduction in the limitation for the 2023 and subsequent tax years of $15,000 multiplied by the 2022 tax rate for public school purposes applicable to the homestead; and
- limiting the service of appraisal board members in counties with a population of 75,000 or more to staggered four-year terms.

HJR 2 also authorizes the Legislature to extend any future applicable property tax exemption increase to seniors and disabled individuals and specifies that certain state appropriations used to support property tax relief are not considered under the constitutional tax spending cap.

SB 2 reduces property taxes by lowering school district maximum compressed tax rates by $0.107. The bill provides state assistance to school districts for tax revenue losses related to applicable property tax adjustments. The bill also establishes temporary provisions related to school district options for reducing local revenue collected as property taxes that exceeds the amount that a district is entitled to for the 2023-24 school year after implementation of the property tax reductions.

Three elected members are added to appraisal boards in counties with a population of 75,000 or more. The bill also specifies board member qualifications, terms of office, and replacement procedures.

SB 2 also includes transition requirements for assessors, chief appraisers, and taxing units for the assessment of property and required taxpayer notifications necessary to implement the property tax reductions.

Supporters said

HJR 2 and SB 2 would provide significant property tax relief to homeowners and other property owners at a time when many Texans are struggling to pay high property taxes driven by rapidly rising property values. By reducing the maximum compressed tax rate for school districts, increasing the amount of the school district residence homestead exemption, and limiting appraised value increases to 20 percent each year for the next three years for certain non-homestead real property, the bill and the resolution would provide substantial property tax relief to both homeowners and businesses.

Adjusting the school district maximum compressed tax rate would provide broad tax relief for all property owners and a reduction in property taxes could help stabilize struggling businesses, enabling them to grow and contribute further to the Texas economy. Renters also would benefit from the reductions as the portion of rent attributed to property taxes would be lower and would grow at a slower rate in the future. As such, future rent increases could be smaller and less frequent.

Increasing the homestead exemption would especially benefit owners of moderately priced homes where relief is most needed. Maximum compressed tax rate reductions, along with the increased homestead exemption, would help prevent a measurable shift of the burden for school property taxes from homeowners to businesses.

The annual limit on the growth of appraised value for certain non-homestead real property would help small business owners stay in business. Many small- and medium-sized businesses are struggling due in part to dramatic increases in property values and corresponding tax increases. Over the next three years, the assessed value growth limit would provide more predictability for businesses and help reduce their out-of-pocket costs.

To ensure schools continued to operate with the same level of revenue, the bill would require that state funding was provided for revenue losses attributed to the property tax reductions. This effort would increase the overall state contribution to education and provide a higher level of state investment in Texas schools. Teacher compensation should be addressed through other legislation in a future legislative session.

Critics said

While HJR 2 and SB 2 would provide property tax relief to Texas homeowners and businesses, these reductions could be short-term, lead to higher consumer prices, or require future cuts to education funding if state revenue decreases. Given that the state relies on a limited number of taxes for funding, the state could need to raise taxes or cut spending to ensure school funding obligations were met if there was a decline in sales tax revenue leading to a state budget shortfall.

Reductions to the maximum compressed tax rate would provide more benefit to businesses, owners of multiple properties, and high-income earners than to middle and lower-income homeowners. Lowering the maximum compressed tax rate also would not necessarily help those who rent, as there is no guarantee that landlords will choose to decrease rents if property taxes decrease. High demand for rental property and limited supply could keep rents high and continue to drive substantive increases even if property taxes are lowered.

Although raising the homestead exemption would provide property tax relief for homeowners, rising property values could reduce the benefit of the exemption and require adjustments to maintain the same or similar level of benefit in the future. Additionally, increasing the homestead exemption could shift more of the school funding tax burden from homeowners to businesses and other taxpayers, which could raise prices for goods and services.

Lowering the school district maximum compressed tax rate would require higher state contributions to ensure schools received the full amount of funding that they are entitled to. Should there be a reduction in state funding for schools, the maximum compressed tax rate may need to be increased to raise property tax collections so that schools could recoup funds lost to state budget cuts.

Other critics said

While property tax relief is an important issue, the bill should include measures addressing teacher pay and other salary enhancements. As the Legislature contemplates such significant changes to school funding, it should also discuss options to further support teachers and retain talent in our classrooms.

Notes

The HRO analysis of HJR 2, Second Called Session, appeared in the July 13 *Daily Floor Report*. An HRO analysis of HB 2, Second Called Session, the companion bill to SB 2, Second Called Session, appeared in the July 13 *Daily Floor Report*.

The 88th Legislature also enacted other legislation related to property taxes during the regular session.

HB 456 by Craddick, which took effect January 1, 2024, adds interest in a mineral in place, including a royalty interest, to the list of assets owned by certain charitable organizations that are exempt from property tax. The HRO analysis of HB 456 appeared in the April 4 *Daily Floor Report*.

HB 4645 by Flores, which took effect January 1, 2024, exempts from property taxation improvements made by certain charitable organizations to leased property used to provide housing to low-income individuals and families. This bill was placed on the House Local, Consent, and Resolutions Calendar and did not receive an HRO analysis.

SB 719 by Paxton, effective January 1, 2024, exempts from property taxation property owned by a charitable organization providing services related to the placement of a child in a foster or adoptive home. This bill was placed on the House Local, Consent, and Resolutions Calendar and did not receive an HRO analysis.

SB 1145/**SJR 64** by West, which took effect January 1, 2024 after SJR 64 was approved by voters, allows a county or municipality to exempt certain property used to operate a child-care facility from local property taxes. The HRO digest of SB 1145 appeared in Part Two of the May

15 *Daily Floor Report* and the digest of SJR 64 appeared in the May 18 *Daily Floor Report*.

SB 1381 by Eckhardt, which took effect January 1, 2024, allows a surviving spouse of an elderly person that received a local option residence homestead property tax exemption to continue receiving an exemption of equal value for the same property from the same taxing unit without needing to apply for the exemption. This bill was placed on the House Local, Consent, and Resolutions Calendar and did not receive an HRO analysis.

SB 1439 by Springer was vetoed by the governor. The bill would have revised provisions related to the ad valorem taxation of personal property held or used for the production of income by a related business. This bill was placed on the House Local, Consent, and Resolutions Calendar and did not receive an HRO analysis.

SB 2289/**SJR 87** by Huffman, which took effect January 1, 2024 after SJR 87 was approved by voters, exempts from ad valorem taxation medical and biomedical equipment or inventory held by a manufacturer of medical or biomedical products. The HRO digests of SB 2289 and SJR 87 each appeared in the May 17 *Daily Floor Report*.

Exempting the consumption of vented gas from severance tax

HB 591 by Capriglione
Effective September 1, 2023

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HB 591 exempts from severance tax gas produced from a qualifying well that is consumed within 1,000 feet of the well site and otherwise would be lawfully vented or flared.

A qualifying well is defined by the bill as a well that:

- is connected to a pipeline on which pipeline takeaway capacity is not expected to meet demand for gas produced from the well;
- is not and cannot feasibly be connected to a pipeline but is operated by a well operator who has contractually dedicated the well, its gas, or the land or lease on which the well is located to a pipeline operator; or
- is not connected to a pipeline and is operated by a well operator who has not contractually dedicated the well, its gas, or the land or lease on which the well is located to a pipeline operator.

A well operator and a pipeline operator, as applicable, may apply to the Railroad Commission of Texas for certification that a well qualifies for the exemption.

An application submitted for the exemption must:

- attest that the well meets the criteria applicable to one of the qualifying well categories;
- be submitted jointly by the well operator and pipeline operator, or by the well operator alone, as applicable; and
- certify that the commission authorized gas from the well to be flared for at least 30 days during the year prior to the application date.

The commission may require an applicant to provide any information relevant to determining whether a well is qualified for the exemption. If an application is approved, the commission is then required to issue a certificate designating a well as a qualifying well, which expires one year after the date of issuance.

A certified well connected to a pipeline on which takeaway capacity is not expected to meet demand is required to use all available takeaway capacity before gas produced from the well may receive an exemption. The comptroller may require an applicant to provide additional information. The commission, well operator, or pipeline operator, as applicable, must notify the comptroller in writing immediately if a well no longer qualifies for an exemption.

Changes made by the bill do not affect tax liability accrued before the effective date.

Supporters said

HB 591 would clarify the circumstances in which gas that otherwise would be lawfully vented or flared could be used without being subject to severance taxes. Lawfully flared or vented gas is not subject to severance tax, but it remains unclear whether gas that would normally be vented but is instead purchased and consumed on site is subject to the tax. HB 591 would provide this important clarification.

Venting and flaring are currently used to dispose of stranded natural gas created as a byproduct of oil production. Typically, oil producers prefer to sell the gas through a pipeline operator. However, when a pipeline connection does not exist or the pipeline does not have takeaway capacity, the gas is vented or flared.

In addition to wasting the gas, venting and flaring can create health risks for nearby residents due to release of carbon dioxide equivalents into the air. Operators such as cloud computing organizations, mobile bitcoin mines, mobile data centers, and others are able to use stranded gas to generate electricity to run the large computer systems that otherwise cause spikes in energy demand. This use repurposes vented and flared gas to meet the growing demand for computing services and prevents the production of harmful emissions through venting.

Bitcoin and other mobile operators are often able to move equipment from site to site to capture gas from multiple producers. Establishing an incentive for these organizations to use stranded gas would be a reasonable and effective solution that avoids unnecessary waste of the gas and reduces carbon emissions. While there will always be a need for emergency flaring or venting to protect the overall health of the well, this innovative use could be an important tool for years to come. The bill would help promote innovation, generate new jobs in both the gas and technology industries, and increase economic activity in the state.

Critics said

The bill would create a permanent tax incentive for an industry that already has a stated goal of ending routine flaring by 2030. In light of the natural gas industry's goal, this tax incentive should be temporary.

A provision also should be added that requires an organization using stranded gas for power production to provide either financial assurance or bonding to ensure any equipment left on site was cleaned up and properly disposed of in the future, similar to requirements currently in place for the solar and wind industries.

Given that the gas is being purchased and put to productive use, it should still be subject to taxation.

Notes

The HRO analysis of HB 591 appeared in the April 13 *Daily Floor Report*.

Expanding the role of appraisal district taxpayer liaisons

HB 1285 by Shine
Effective January 1, 2024

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HB 1285 expands the duties of the taxpayer liaison officer of an appraisal district with a population of 120,000 or more to include the resolution of certain complaints related to the appraisal district or appraisal review board. The bill also authorizes new deputy taxpayer liaison officers, expands liaison officer training requirements, and revises the process for removing the chairman of an appraisal review board.

Complaint resolution. The bill allows property owners to file a written complaint with a taxpayer liaison officer requesting the resolution of a dispute with either an appraisal district or an appraisal review board over matters unrelated to the appraisal of the owner's property. The officer may resolve complaints by:

- referring the property owner to information and materials prepared for property owners by the liaison office;
- meeting with the parties to facilitate an informal resolution to the complaint;
- following the statutory process to address complaints related to appraisal review board hearing procedures;
- assisting the property owner in filing a request for limited binding arbitration; or
- recommending a course of action the liaison officer believes will resolve the issue to the appropriate entity.

The taxpayer liaison officer is required to dismiss any part of a complaint pertaining to the appraised value of a property or the appraisal methodology used and is authorized to dismiss a complaint that is repetitive or fails to state a legitimate concern. If a complaint involves tax assessment or collection, the officer must resolve the complaint by referring the property owner to a person able to assist with these issues.

The taxpayer liaison officer must resolve complaints and notify property owners within 90 days after the complaint is filed. Decisions related to complaints received by the officer are not eligible for protest, limited binding arbitration, or appeal. The officer is required to provide additional information and materials to taxpayers related to filing a complaint with the appraisal district and the process for submitting a request for limited binding arbitration.

Members of an appraisal district board are required to annually review the performance of the taxpayer liaison officer and each deputy taxpayer liaison officer as applicable. The evaluation must include a review of how timely the officer resolves complaints.

Deputy taxpayer liaison officers. Under the bill, appraisal districts may appoint one or more deputy taxpayer liaison officers. The bill establishes that the taxpayer liaison officer is the appraisal district officer primarily responsible for assisting taxpayers for the district. HB 1285 also extends provisions prohibiting the chief appraiser or other individuals that receive compensation for performing appraisals or legal services for an appraisal district from serving as the taxpayer liaison officer to include serving as a deputy taxpayer liaison officer.

Taxpayer liaison training. The comptroller is required to establish and supervise a program for training and educating taxpayer liaison officers and deputy taxpayer liaison officers. The program may be offered online and must:

- include information on the duties and responsibilities of the liaison officer and deputy liaison officer, including procedures for the informal resolution of disputes;
- be at least two hours in length; and
- provide a certificate of completion.

As a condition of initial and continued appointment, taxpayer liaison officers and deputy taxpayer liaison officers must complete both taxpayer liaison training and

the training course for appraisal review board members within their first year of employment and every even-numbered year after their first anniversary.

Removal of appraisal board chairman. The bill revises the process for removing the chairman of an appraisal review board if it is found that the appraisal district has adopted or is implementing hearing procedures that do not comply with the comptroller's model hearing procedures. Instead of allowing the board to remove the chairman, the board must refer the matter to the local administrative judge with a recommendation that the judge remove the chairman from the board. If the judge agrees with the board's recommendation, the judge must remove the chairman and appoint another board member.

Information for the public. The bill adds to the information that the taxpayer liaison officer is required to provide to the public the process for filing a complaint that alleges the appraisal review board has adopted or is implementing hearing procedures that do not comply with the comptroller's model hearing procedures. The taxpayer liaison officer is also required to publicize open appraisal review board positions. If an appraisal district maintains a website, the chief appraiser must post the name, contact information, and duties of the taxpayer liaison officer on the website and must prominently post a link to this information on the district's home page.

The required comptroller taxpayer assistance pamphlet must be revised to include the functions of the taxpayer liaison officer in an appraisal district with a population of 120,000 or more and to provide advice on preparing and presenting certain protests to the appraisal review board.

Supporters said

HB 1285 would help create a more taxpayer-friendly system for property owners to address grievances with an appraisal district. It is often difficult for taxpayers to have complaints unrelated to their tax appraisal values resolved by the appraisal review board, which can be frustrating for taxpayers. Current remedies for these types of complaints involve filing formal protests and appeals, and taxpayers may feel intimidated by these processes without someone to guide them. The bill would expand the liaison officer's role to provide such assistance and expand training requirements to ensure officers had the necessary skills and information to guide taxpayers through complex property appraisal and tax procedural issues.

Liaison officers are intended to be a resource for property owners and to help improve understanding of the appraisal board district's policies and procedures. Expanding their role and building greater awareness could help reduce the number of complaints received by boards and relieve taxpayer frustration with the appraisal process.

Critics said

No concerns identified.

Notes

The HRO analysis of HB 1285 appeared in Part One of the April 20 *Daily Floor Report*.

Exempting certain family care products from sales and use tax

SB 379 by Huffman
Effective September 1, 2023

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SB 379 exempts from sales and use tax the sale, storage, use, and other consumption of:

- feminine hygiene products;
- adult or children's diapers;
- baby wipes;
- baby bottles;
- maternity clothing; and
- breast milk pumping products, including the accessories necessary for use of the device.

The bill also codifies an exemption for wound care dressings and defines which wound care dressing products qualify for the exemption.

Tax liability accrued prior to the effective date is not affected by the bill.

Supporters said

SB 379 would provide support for women and families at all stages of life by lowering the cost of items essential to daily living. As costs rise in response to inflation and supply chain issues, many families must make difficult choices when spending limited funds, such as purchasing feminine hygiene products and diapers or other necessities like gas, food, or electricity.

The high cost of feminine hygiene products forces many low-income women and teens to go without them. A lack of hygiene products can lead to absences at work and school, potentially leading to job loss or educational delays. The state has exempted other basic necessities such as sunscreen, hand sanitizer, and acne treatments, and should do the same for feminine hygiene products essential to a woman's health and quality of life. Eliminating the sales tax on such products could help ease the monthly financial burden of these products.

With inflation and escalating costs, an increasing number of families are struggling to provide basic necessities for their children. Parents unable to afford adequate diaper supplies are often forced to reuse soiled diapers, prolong the use of a dirty diaper, or attempt to find alternatives such as paper products or towels, causing children to develop infections and generally leading to poor health. Additionally, parents who are unable to provide the number of diapers required by many day-care centers may not have access to alternative childcare. This could force a parent to take leave, creating further financial stress for the family. Eliminating the sales tax and lowering the cost of diapers would help to break this cycle, allow families to build better financial security, and ensure that children do not miss the important early learning experiences and developmental opportunities that occur in day-care settings.

The bill also would codify the tax exemption for wound care dressings that is currently established in policy by the comptroller of public accounts, ensuring that this tax exemption will continue into the future.

Critics said

No concerns identified for the final version of the bill.

Notes

The HRO digest of SB 379 appeared in Part Two of the May 22 *Daily Floor Report*.

A similar bill, HB 300 by Howard, was passed by the House on March 29, 2023. The Senate Finance Committee substitute for SB 379 contained substantially similar language to the engrossed version of HB 300 that passed the House and died in the Senate. The HRO analysis of HB 300 appeared in the March 28 *Daily Floor Report*.

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Transportation

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*Finally approved

Expanding funding for port roadways

HJR 144

Died in the Senate

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HJR 144 would have amended the Texas Constitution to allow revenue under Art. 8 sec. 7-a, also known as the State Highway Fund, to be used for the purpose of constructing and maintaining roadways for seaports, airports, spaceports, land ports of entry, and international bridges.

The resolution would have specified that, in addition to funds from motor vehicle registration fees and gas taxes, all other revenue dedicated by the Legislature specifically for purposes described by Art. 8 sec. 7-a and not otherwise constitutionally dedicated would be required to be used for those purposes.

Supporters said

HJR 144 would enable Texas to invest in infrastructure to drive economic growth, make supply chains more efficient and secure, and keep the state's ports nationally competitive. Recent global crises such as the COVID-19 pandemic and the conflict in Ukraine have demonstrated the importance of strengthening hubs of transportation and commerce. Sea and air ports create many thousands of jobs and ultimately generate revenue for the state.

As other states have begun to invest state funds in port infrastructure, Texas must follow suit to remain economically and technologically competitive. The constitution currently restricts the State Highway Fund to use for public roadways, meaning that the fund cannot be used to develop roads inside ports. HJR 144 would allow increased state investment in this economically powerful infrastructure.

HJR 144 would not allow State Highway Fund money to be used for any port infrastructure other than developing port roadways, so using funds derived from gas taxes and vehicle registrations, which are dedicated for road construction and maintenance, would be appropriate. The proposed amendment would not direct or allocate funds but would give the Texas Department of Transportation the flexibility to determine which projects were most worthwhile. Allowing the state highway fund to be used for port roadway projects would not reduce transparency because the Transportation Commission would have oversight for these projects just as they do for public highways.

Critics said

HJR 144 would allow State Highway Fund money to be diverted from its proper and constitutionally dedicated purpose of paying for building and maintaining public highways. Directing these funds to projects for port authorities and other entities could reduce fiscal transparency and accountability. Seaports, airports, and other forms of infrastructure should rely on existing funding mechanisms or find other funds rather than place a strain on resources for public roads.

Notes

The HRO analysis of HJR 144 appeared in the April 20 *Daily Floor Report*.

Another bill concerning port funding, **SB 1499** by Nichols, took effect on September 1, 2023. The bill updates the statute governing the Port Access Account Fund and specifies that money appropriated by the Legislature or received from the federal government may be credited to the fund. The bill prohibits any one fund applicant from receiving more than 20 percent of money appropriated to the fund in a biennium.

The HRO analysis of the companion bill to SB 1499, HB 2605 by Canales, appeared in the May 9 *Daily Floor Report.*

Eliminating temporary tags, requiring dealer-issued license plates

HB 718 by Goldman
Effective July 1, 2025

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HB 718 repeals statutory requirements for the use of buyer's temporary tags for certain motor vehicles and instead requires vehicle dealers to issue license plates to buyers upon purchase of a vehicle, if a license plate or set of plates is legally required to be displayed on the vehicle. Such license plates are valid for the operation of the vehicle while the registration application submitted by the dealer on the behalf of the buyer is pending. If a vehicle lacks certain license plate installation features, a dealer is required to secure the rear license plate in compliance with Texas Department of Motor Vehicles (TxDMV) rules and provide the remaining unmounted license plate to the buyer.

Under the bill, dealers are required to obtain license plates from TxDMV in the manner provided by department rules. TxDMV also must ensure that a dealer may obtain in advance a sufficient amount of license plates in order to continue selling vehicles without an unreasonable disruption of business. A dealer may not issue license plates for a vehicle that is exempt from registration fees until TxDMV approves the application for the vehicle's registration. The bill also would remove the $5 limit for registration fees charged by the dealer for each license plate or set of plates issued to a buyer. The bill establishes that a temporary license plate issued to certain non-resident buyers for out-of-state vehicles is valid for 60 days.

HB 718 revises statute on a buyer's temporary tag database to instead require TxDMV to maintain a database of dealer-issued license plates for the same purpose. Before license plates issued under the bill may be displayed on a vehicle, a dealer must complete and sign a form stating that the dealer entered the buyer's information into the database. If a dealer is unable to access the internet at the time of sale to enter the buyer's information into the database, the dealer is required to complete and sign a form with a statement to that effect. The form must contain a notice to the buyer describing the procedure by which the vehicle's registration insignia will be provided. A buyer must keep an original copy of the applicable form in the vehicle until it is registered to the buyer.

TxDMV is authorized to establish the maximum number of license plates that a dealer may obtain in a calendar year, based on anticipated need and taking into account certain relevant information about a dealer. A dealer may receive additional license plates if the dealer demonstrates a need. TxDMV may deny access to the database of dealer-issued license plates to a dealer who is obtaining license plates or using the database fraudulently. The bill also establishes provisions on the unauthorized use or distribution of dealer-issued license plates.

The bill amends provisions on certain temporary permits and license plates. HB 718 also revises statute on the transfer and removal of license plates, requiring that each license plate removed by a dealer on the sale or transfer of a vehicle be assigned to the subsequent vehicle purchaser. A motor vehicle purchaser may request replacement license plates. Additionally, the bill removes provisions allowing a seller who is not an approved dealer to remove and transfer the plates to another vehicle in certain cases. The bill revises provisions on vehicle transfer notifications, requiring that on the sale or transfer of a vehicle, a dealer submits a notice of transfer to TxDMV.

HB 718 repeals authorization for certain temporary vehicle permits and tags and associated offenses. The bill makes conforming changes throughout statute to amend references to temporary tags and reflect various changes made by the bill.

Supporters said

By requiring license plates, rather than paper tags, for vehicles at the time of purchase, HB 718 would help prevent the use of fraudulent temporary tags. The temporary tags currently in use allow criminals, such as human smugglers and drug cartels, to easily use fake paper tags to disguise their vehicles and avoid prosecution. Furthermore, fraudulent tags are often sold online to those attempting to avoid registration and inspection

fees, conceal stolen vehicles, or mask a vehicle's history from a potential buyer. The proliferation of these fake paper tags, which can be copied for use by hundreds of vehicles, makes it increasingly difficult for law enforcement to locate the culprit when a crime is committed. HB 718 would improve registration enforcement, returning millions of dollars in lost revenue to the state, and better address the fraud and public safety concerns associated with temporary paper tags. By doing so, Texas also would join several other states in requiring the use of license plates registered to a specific dealer.

HB 718 would not take effect until July 2025, allowing the TxDMV and auto dealerships ample time to make the necessary changes for the bill's implementation.

Critics said

HB 718 could pose implementation challenges to TxDMV, Texas auto dealers, and county tax-assessors regarding the distribution and storage of and liability for dealer-issued license plates. Providing numerous license plates to auto dealers could make their businesses more susceptible to theft. The bill also fails to specify how the license plates should be allocated and audited across county lines, which could place administrative burdens on those managing the license plates without supplying additional resources. The state should hire more staff and levy additional fees to better equip dealers and county officials to handle the additional plates they would be required to inventory, transfer, and store. Clearer regulations also should be in place to ensure that TxDMV can adequately address the issuance, distribution, and disposal of license plates for over 22,000 auto dealers across the state.

HB 718 also could negatively impact smaller counties with fewer car dealers that often do not have the technology needed to access the TxDMV database. Willing county laws have allowed smaller counties to retain sales-tax revenue by helping to title and register cars from larger counties when applications became too numerous. Tax-assessors also work with dealers from these counties to ensure that the application fee is correctly assessed to the purchaser's resident county. By requiring that a purchaser's registration application be completed by the dealer facilitating the purchase, HB 718 could nullify these agreements while establishing requirements that small dealers may be unable to meet on their own.

Notes

The HRO analysis of HB 718 appeared in the May 1 *Daily Floor Report*.

Eliminating mandatory vehicle safety inspections

HB 3297 by Cody Harris
Effective January 1, 2025

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HB 3297 repeals provisions mandating vehicle safety inspections for non-commercial vehicles. The bill also eliminates the corresponding inspection fee, establishes an annual inspection program replacement fee, and makes conforming changes throughout statute to reflect these revisions.

Inspection program replacement fee. The bill establishes a $7.50 inspection program replacement fee to be paid in addition to other fees at the time of initial registration or registration renewal of a motor vehicle, trailer, pole trailer, semi-trailer, or mobile home.

The bill requires an applicant to pay a one-time fee of $16.75 for the initial registration of a passenger car or light truck sold in Texas or purchased by a commercial fleet buyer for use in Texas if the vehicle was not previously registered in Texas or another state and if the vehicle on the date of sale is of the current or preceding model year. A person who pays the one-time fee is not required to pay the annual $7.50 fee to register the vehicle the following year. An additional fee currently assessed on vehicles weighing more than 4,500 pounds is repealed. The bill also establishes that certain vehicles are exempt from the inspection program replacement fee.

The Texas Department of Motor Vehicles (TxDMV) or a county assessor-collector that registers a motor vehicle subject to fees under the vehicle emissions inspection and maintenance program or inspection program replacement fee must collect the state's portion of the inspection fee and remit collected fees to the comptroller.

The bill revises current statute so that from the annual fee the comptroller is required to deposit $3.50 to the Texas Mobility Fund, $2 to general revenue, and $2 to the Clean Air Account. For the $16.75 one-time fee for the initial registration of certain vehicles, the comptroller must deposit $12.75 to the Texas Mobility Fund, $2 to general revenue, and $2 to the Clean Air Account.

Inspection timing for registration-based enforcement. The Department of Public Safety (DPS) must require a vehicle that must be inspected to pass the required inspection:

- for initial registration, no earlier than 90 days before the date of registration;
- for registration renewal, no earlier than 90 days before expiration of the vehicle registration;
- for a used vehicle sold by a dealer, in the 180 days before the date the dealer sells the vehicle; and
- for vehicles subject to federal motor carrier safety regulations, in a period that complies with federal regulations.

Misdemeanor offenses. The bill eliminates the misdemeanor offense of operating or moving a motor vehicle, trailer, semitrailer, pole trailer, mobile home, or a combination of those vehicles in a mechanical condition that endangers a person or property. The bill also eliminates the misdemeanor offense of seeking an inspection of a vehicle at a station not certified to perform an emissions inspection with intent to circumvent emissions inspection requirements, if the person knows the vehicle must be inspected. The bill applies only to offenses committed on or after January 1, 2025.

Legislative report. By January 1, 2025, DPS is required to submit to the lieutenant governor and the speaker of the House of Representatives a report on changes in its expenses and income resulting from implementation of the bill, including any increases or decreases in the number of full-time equivalent employees needed to administer state laws governing vehicle equipment standards and vehicle inspections between September 1, 2023, and the date the report is prepared.

Other provisions. The bill removes a requirement for the advisory committee related to vehicle inspections to include two members from counties conducting vehicle emission testing and two members from counties

conducting safety-only inspections. HB 3279 also eliminates the requirement for reinspection when a vehicle is involved in an accident that affects the safe operation of the vehicle and adds a requirement for assembled motor vehicles to be equipped with front safety belts if the vehicle has safety belt anchorages.

Supporters said

HB 3297 would eliminate unnecessary, costly, and time-consuming passenger vehicle safety inspections that have had little impact on public safety. Current vehicle safety inspections do not noticeably reduce the number of traffic accidents, as evidenced by Texas' high insurance premiums. In addition, relatively few accidents are caused by mechanical component failures when compared to those caused by driver error.

While vehicle safety inspections might identify an issue that could lead to an accident, not all identified issues must be repaired to pass an inspection. Many owners either are unable or choose not to make these repairs. As a result, even with required vehicle inspections, many cars with safety issues remain on Texas roads. Additionally, modern passenger vehicles are equipped with onboard diagnostic systems that monitor car performance, detect potential issues, and alert drivers to issues that need to be resolved. As a result, many of the issues that would be caught during a safety inspection are now identified much earlier by the vehicle, allowing an owner to make more timely repairs.

Texas is one of only a few states that still requires an annual vehicle safety inspection. In prior years, many states had mandatory vehicle safety inspections because the federal government withheld federal highway dollars from those that did not require inspections. However, most states ended their vehicle safety inspection programs when the federal penalty was repealed. Texas could adopt similar policies to states without vehicle safety inspections, where law enforcement officers have assumed a larger role in enforcing vehicle safety and have been given broader authority to make traffic stops when they observe potential vehicle safety issues.

The January 1, 2025, effective date would allow the state time to thoughtfully and methodically revise current regulations to implement the bill. The longer timeline would also allow owners of inspection stations to retool current business models in anticipation of a potential shift in business resulting from the elimination of mandatory vehicle safety inspections.

Although safety inspections would no longer be required for passenger vehicles, owners of such vehicles in counties subject to federal emissions testing still would be required to comply with emissions testing requirements.

Eliminating the annual vehicle safety inspection would save Texans millions of dollars since they would pay the lower replacement fee instead of an inspection fee. Additionally, owners would no longer have to take time out of their busy lives for vehicle inspections. The replacement fee also would ensure the state did not lose revenue previously generated by the inspection fee, and these funds would continue to support the Texas Mobility Fund, general revenue fund, and the Clean Air Account.

Although some have raised concerns that repealing the safety inspection and report would eliminate a means for owners to learn about auto safety recalls from automobile manufacturers, the bill would not change a vehicle manufacturer's responsibility to provide owners with notice of a recall and would not inhibit a manufacturer from using notification strategies currently used in states without required safety inspections.

Critics said

Eliminating passenger vehicle safety inspections would increase the number of unsafe vehicles on Texas roadways. Since Texas has a high number of vehicle fatalities each year, mandatory inspections should continue, as they are a helpful tool in reducing car accidents and deaths. The bill also could lead to more air pollution since cars unable to pass basic safety standards also are unlikely to pass an emissions inspection, which is only required in some Texas counties.

Vehicle safety inspections help protect law enforcement by ensuring window tints are within standards that allow police to see inside a car as they approach. Additionally, by decreasing the number of cars with safety issues on the road, inspections can help law enforcement avoid potentially confrontational traffic stops for broken or burned-out taillights. In addition to increased safety risk, eliminating vehicle safety inspections could burden law enforcement with the responsibility of more extensively monitoring vehicle safety, which many agencies do not have the resources to do.

HB 3297 could put small vehicle safety inspection businesses out of business. The loss of these businesses could be problematic in counties required by federal

regulation to begin emissions testing in the future, as it would take time to rebuild capacity for such testing if current businesses were forced to close because of the new law. This could jeopardize an owner's ability to access an inspection to comply with the new emissions testing requirement and maintain a current vehicle registration.

The replacement fee would constitute assessing a tax for a service not provided. By eliminating the inspection but retaining a fee, vehicle owners would have to pay what is essentially a tax without receiving a corresponding benefit.

The annual vehicle safety inspection is the best avenue to ensure vehicle owners receive notice of vehicle recalls. Although manufacturers mail recall notices to owners, notices can be missed when owners move, potentially leaving individuals unaware of recommended repairs. Eliminating mandatory inspections could result in more unsafe cars on the road, as owners unaware of recalls may continue to drive faulty vehicles.

Notes

The HRO digest of HB 3297 appeared in the May 4 *Daily Floor Report*.

Requiring an additional registration fee for electric vehicles

SB 505 by Nichols
Effective September 1, 2023

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SB 505 requires that, in addition to other applicable fees, an applicant for registration or registration renewal of an electric vehicle pay a fee of $400 for a vehicle requiring a two-year initial inspection and $200 for a vehicle requiring an annual inspection. These fees must be deposited in the State Highway Fund. The bill defines "electric vehicle" as a motor vehicle weighing no more than 10,000 pounds that uses electricity as its only source of motor power. The term does not include an autocycle, moped, motorcycle, or neighborhood electric vehicle.

Supporters said

SB 505 would ensure that electric vehicle owners paid their fair share of the cost of maintaining and constructing Texas highways by requiring an additional registration fee. Highways are funded mainly by the gas taxes paid at the pump by drivers of conventional vehicles. While electric vehicles cause wear on the roads, they currently do not contribute to the State Highway Fund. As more drivers switch to electric vehicles, there is an urgent need to replace the fund's diminishing gas tax revenue.

The fee proposed in SB 505 is based on the findings of a study by the Texas Department of Motor Vehicles and other state agencies that determined the average amount of state and federal gas tax revenue per conventional vehicle. A flat fee could be easily administered with minimal implementation costs, while a vehicle-miles-traveled fee would impose a significant administrative burden on state agencies. Similarly, making the initial fee payable in multiple installments would increase administrative costs and make it difficult to enforce collection, since the total would no longer be paid at the time of registration. While drivers of smaller gas-powered cars do pay proportionally less in gas taxes, size-equivalent electric vehicles are heavier than conventional vehicles and thus cause more wear to the road, so the $200 fee would be appropriate.

Critics said

While electric vehicle drivers should contribute to road maintenance, the fees proposed by SB 505 would be too high and could discourage some drivers from purchasing electric vehicles, which produce fewer greenhouse gas emissions than conventional vehicles. A fee based on vehicle-miles-traveled would be more comparable to the gas tax for conventional vehicle drivers, who pay more the more they drive. If the state adopts a flat annual fee, it should only be equivalent to the average revenue from the state portion of the gas tax rather than both state and federal portions. Additionally, since smaller electric vehicles cause less road wear and the equivalent conventional vehicles generate less gas tax revenue than larger vehicles, the bill should include a lower-tier fee for these types of vehicles.

Other critics said

The initial $400 dollar fee proposed by SB 505 may be difficult for some families to afford all at once and the bill should allow the fee to be paid in multiple smaller installments.

Notes

The HRO analysis of the companion bill to SB 505, HB 2199 by Canales, appeared in the April 26 *Daily Floor Report.*

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