



**THE UNIVERSITY OF TEXAS SYSTEM**  
**OFFICE OF GENERAL COUNSEL**  
**OFFICE OF GOVERNMENTAL RELATIONS**

**Summaries of Legislation Impacting Higher Education**

**83<sup>rd</sup> Legislature**

**The Regular Session and First, Second, and Third Called Sessions**

**August 2013**

## FOREWORD

This publication, prepared by The University of Texas System Office of General Counsel (OGC) and Office of Governmental Relations (OGR), summarizes actions of the Regular Session and First, Second, and Third Called Sessions of the 83<sup>rd</sup> Legislature affecting higher education and is offered for the convenience of System officers and employees who need to implement or otherwise be aware of those legislative actions. This publication includes both an overview of the 83<sup>rd</sup> Legislature prepared by OGR and summaries of individual bills prepared by OGC attorneys.

The overview of the 83<sup>rd</sup> Legislature includes a summary of the budget for the next fiscal biennium and highlights selected significant legislation that became law. The summaries of individual bills follow the overview and are arranged by subject matter under broad categories, such as Academic Issues and Health Issues. Note that some of the bills under “Academic Issues” apply to health institutions as well as academic institutions, and vice versa. Within each subject, bills are listed in numerical order, not in order of significance. Some individual bills appear under more than one subject heading. For each bill, the summary describes the main points of the bill that affect higher education and provides a general assessment of the impact of the bill. Many summaries offer brief guidance about implementation and directions or suggestions as to which officers or employees should be aware of the bill. The summary includes the name of the OGC attorney who prepared the analysis and who may be contacted for further information.

Each summary is merely that—a summary. It is intended to direct the reader’s attention to a bill and to provide enough information for the reader to determine whether detailed analysis and possible development of an implementation plan is necessary. **The summary is not a substitute for a holistic analysis of a bill in light of the particular circumstances of an office or institution.**

The full text of each bill is available through a hyperlink in the electronic version of this document. The text, as well as the legislative history and a wealth of other information for each bill, is also available free online at [www.capitol.state.tx.us](http://www.capitol.state.tx.us). That website is maintained by the Texas Legislative Council, a state agency serving both houses of the Texas Legislature, and contains many other resources regarding legislation.

This project was under the direction of Jason King, Senior Attorney and Ethics Advisor. We welcome your suggestions on ways to improve this publication in the future so that we may continue to serve you in the process of implementing legislation that affects your mission.

Dan Sharphorn, Vice Chancellor and General Counsel *ad interim*  
Barry McBee, Vice Chancellor and Chief Governmental Relations Officer

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## **OVERVIEW OF THE 83rd LEGISLATURE**

More than anything else, the state of the budget tends to determine the personality of a legislative session. Unlike the 82<sup>nd</sup> Legislature, which began with a multi-billion dollar revenue shortfall, the 83<sup>rd</sup> Legislature began with a State Treasury that was in the black and a Rainy Day Fund (technically, the “Economic Stabilization Fund”) that was made healthy by an oil and gas boom. While the good budget news begat a relative bonhomie among legislators in comparison to other recent sessions, it was clear the state faced not so much a surplus as an ability to fill holes left from the previous budget and to address some long-standing infrastructure needs that had gone wanting. Appropriators will tell you that their job is easiest when the budget—revenue and expenses—are relatively flat.

Higher education was not a major policy focus for the 83<sup>rd</sup> Legislature, with a couple of exceptions. The major issues—which, of course, also tend to be budget drivers—were public education, transportation, criminal justice, and water, a list that could describe most legislative sessions over the last 30 years. Of those items, transportation remained unresolved until the third called session.

From the standpoint of higher education, the most significant policy debates may have occurred in the context of two bills, SB 215 and SB 15. Senate Bill No. 215, the “sunset” bill for the Texas Higher Education Coordinating Board, effected major changes in the regulatory relationship between that agency and institutions of higher education. For example, SB 215 removed the coordinating board from the approval of construction projects and real estate acquisitions by institutions of higher education. Senate Bill No. 15, which realigned the respective responsibilities of boards of regents, chancellors, and institutional presidents, passed both houses with near unanimity but was vetoed by the governor.

While general revenue funding for higher education was up overall, the legislature did not authorize tuition revenue bond (TRB) projects. A TRB bill seemed on the cusp of passing at the end of the regular session, but failed to make it to a final vote. The governor, who controls the agenda for special sessions, never added the subject of TRBs to the legislative agenda for the special sessions.

The pace of the regular legislative session was measured, if not slow, reflected in the absence of emergency matters or special rules for particular measures. The governor submitted no emergency items, and the Senate adopted no special rules to avoid the necessity of a 2/3 vote of the members in order to debate an issue on the floor. Ultimately, legislators filed 5,868 bills and joint resolutions (the latter are used to propose constitutional amendments), only 72 more than the previous session. Of those, about 25% passed both houses, an average amount. The governor vetoed 26 bills, compared to the 24 he vetoed two years earlier.

Personnel participating in system-wide review and analysis of legislation and the Office of General Counsel analyzed, and the Office of Governmental Relations tracked, 2,302 of the bills and joint resolutions, about 39% of the total introduced. About 20% of those became law.

This overview summarizes the new state budget as it pertains to higher education and the UT System, discusses selected significant bills of interest that became law, and describes studies commissioned by the legislature for the interim between the 83rd and 84th Legislatures.

## **Budget Summary**

*This section summarizes higher education appropriations for the next biennium as included in the general and supplemental appropriations bills.*

### In General

The General Appropriations Act (GAA), Senate Bill 1 (SB 1) by Williams and Pitts, authorizes \$197.0 billion in state government spending for the fiscal biennium that begins September 1, 2013 (fiscal years 2014 and 2015). The total is \$7.1 billion more than the budget for FY 12-13, a 3.7 percent increase overall. General revenue (GR) makes up 48 percent of the budget or \$94.6 billion.

Additionally, a supplemental appropriations bill from the regular session, House Bill 1025 (HB 1025) by Pitts and Williams, appropriates \$81.8 million for institutions and agencies of higher education. Through HB 1025, UT System institutions receive supplemental appropriations as a partial reimbursement for Hazlewood Legacy tuition exemptions and for the Texas Research Incentive Program. Expansion of graduate medical education residency programs is also funded through HB 1025. Supplemental special item appropriations for several institutions and an appropriation for tuition revenue bond debt service were vetoed by the Governor, the latter because a bill authorizing TRBs failed to pass. HB 1025 generally makes appropriations for the current fiscal year, FY 2013, but includes appropriations that continue into the next fiscal biennium.

### Higher Education and the UT System

The 83rd Legislature appropriated \$13.1 billion in general revenue to support all of higher education, including amounts estimated for employee benefits, for 2014-15. This represents an increase of \$604.1 million in General Revenue or 4.8 percent above 2012-13 expenditures.

For the University of Texas general academic institutions (GAIs), health-related institutions (HRIs), and system administration, the appropriations bills include \$3.3 billion in GR appropriations for 2014-15, an increase of \$249.4 million or 8.1 percent compared to 2012-13. General revenue appropriations total \$1.5 billion for the nine UT GAIs; \$1.8 billion for the six UT HRIs; and \$25.0 million for UT System Administration. Another \$397.1 million is appropriated for the cost of employee group health insurance for the System and all institutions. The operating funds (exclusive of TRB debt service appropriations) increase of \$238.5 million includes GAI increases totaling \$94.7 million, or 7.53 percent; HRI increases totaling \$134.8 million, or 8.65 percent; and UT System Administration increases totaling \$9.0 million, or 316.9

percent. (The increase to UT System Administration is funds trusted for the Alzheimer's Consortium.)

### Formula Funding

The Legislature funded enrollment growth and increased higher education formula funding. Nine UT GAIs receive total formula funding of \$1.1 billion, a total increase of \$55.0 million in General Revenue, or 5.4 percent. The six UT HRIs receive total formula funding of \$1.2 billion, a total increase of \$118.3 million in General Revenue, or 11.2 percent. Formula funding includes \$247.5 million for UT M.D. Anderson's Cancer Center operations formula and \$54.6 million for UT Health Science Center Tyler's Chest Disease Center operations formula.

### Tuition Revenue Bonds

No new Tuition Revenue Bonds were authorized by the 83rd Legislature. Appropriations for debt service for existing authorizations are at institution-requested levels.

### Student Financial Aid

HB 1 appropriates \$135.0 million more in General Revenue for the Texas Grants at the Texas Higher Education Coordinating Board (THECB), for a total appropriation of \$724.6 million for the biennium. Appropriations for the Texas B-On-Time program and College Work Study program are \$112.0 million and \$18.8 million, respectively, for the biennium.

### Research and National Research Universities

Overall research appropriations total over \$810 million. The majority of these funds are distributed through the following programs:

► The Texas Competitive Knowledge Fund (TCKF), from which institutions are allocated funding based on research expenditures over the previous three-year period, is appropriated \$159.2 million, an increase of \$65.7 million. TCKF appropriations are used to support faculty for the purpose of instructional excellence and research. For each eligible UT institution, TCKF appropriations are:

- UT Austin \$53,404,206
- UT Dallas \$8,252,942
- UT Arlington \$6,234,706
- UT El Paso \$6,437,760
- UT San Antonio \$5,000,000

► The Research Development Fund (RDF), which supports increased research capacity at institutions other than UT Austin and Texas A&M University, is appropriated \$73.9 million. The RDF is allocated by formula and is used for items such as laboratory and equipment upgrades.

The eight System GAIs other than UT Austin will receive \$33.3 million from the RDF (an increase of \$3.4 million).

► The Texas Research Incentive Program (TRIP), created by HB 51, 81<sup>st</sup> Legislature, provides funding to support the emerging research institutions in developing and maintaining research programs. The institutions that have been designated as emerging research institutions include UT Arlington, UT Dallas, UT El Paso, UT San Antonio, the University of Houston, the University of North Texas, and Texas Tech University. For 2014-15, \$35.6 million in General Revenue is appropriated to the THECB for the TRIP to provide matching funds to the emerging research institutions that receive gifts or endowments from private sources for the purpose of enhancing research activities at the institutions. An additional \$34.4 million for 2013 is appropriated in House Bill 1025.

► The Cancer Prevention and Research Institute of Texas (CPRIT) is appropriated \$600 million in General Obligation bond proceeds for the purpose of awarding cancer prevention and research grants.

► The National Research University Fund (NRUF) is a constitutionally dedicated fund designed to enable emerging research universities to achieve national prominence as major research universities. The total return on investment of the fund is appropriated by formula to emerging research institutions that meet statutory eligibility criteria such as research expenditures, total endowment, and faculty quality. (UT Arlington, UT Dallas, UT El Paso, and UT San Antonio are the System institutions designated as “emerging research institutions,” and each is eligible for NRUF distributions when the institution meets the other eligibility criteria.) Appropriations from NRUF are an estimated \$55.9 million.

### Technology

The Texas Emerging Technology Fund (TEFT), which is used to acquire new or to enhance existing research superiority at public institutions of higher education and is administered by the Governor’s office, aims to stimulate economic activity and development in Texas for emerging technologies, particularly university research and technological commercialization, or technology transfer. The fund will have \$57.2 million available in FY 14-15.

### Medical Education

The state’s Health-related Institutions will see an increase of \$187.9 million or 16.5 percent for the three main formulas: Instruction and Operations, Infrastructure, and Research. The System’s HRIs will receive \$834.7 million of the overall total \$1.3 billion appropriation for the next biennium, a \$70.6 million increase from 2012-13.

The state’s Health-related Institutions will see an increase of \$8.8 million for the Graduate Medical Education (GME) formula. The System’s HRIs will receive \$39.4 million of the overall total \$65.7 million appropriation for GME for the next biennium.

Additional appropriations to the THECB for GME for residency program expansion are included in SB 1 (\$5.0 million) and HB 1025 (\$9.25 million). The THECB appropriation also includes \$5.0 million for the Family Practice Residency Program in SB 1 and \$7.8 million in HB 1025.

The THECB also received \$33.8 million for the THECB Physician Education Loan Repayment Program and \$10.2 million for the Joint Admission Medical Program (JAMP), a program providing mentoring and scholarships to assist highly qualified, economically disadvantaged students in pursuing medical degrees.

The Alzheimer's Disease Centers appropriation increased \$4.0 million to \$9.2 million for the 2014-15 biennium. The appropriation was trusted to the University of Texas System Administration.

The Texas Department of State Health Services (DSHS) received an appropriation of \$4.5 million for the biennium for allocation to the Stroke System of Care Coordinating (Lone Star Stroke).

### Nursing

The THECB received a \$3.6 million increase for the Professional Nursing Shortage Reduction Program, for a total of \$33.6 million for the biennium.

### Correctional Managed Health Care

HB 1 appropriates \$963.1 million to the Texas Department of Criminal Justice (TDCJ) for health care services to state prison inmates provided through The University of Texas Medical Branch at Galveston (UTMB and) the Texas Tech University Health Science Center, which represents an increase from 2012-13 appropriations.

## **Selected Significant Legislation that Became Law**

*This section highlights selected significant measures of general interest to higher education. Each is discussed in more detail in the main volume. It is not a complete listing of all legislation affecting higher education. Unless indicated otherwise, bill numbers refer to bills from the regular session. Because the bills are arranged by subject matter, some bills are considered under more than one heading.*

### **Academic Issues**

#### Institutional Information

HB 1296 (Alvarado, et al. and Taylor) requires the Texas Education Agency (TEA) to prepare information comparing institutions of higher education and post the information on the agency's Internet website. In addition to identifying postsecondary education and career opportunities and workforce needs, the information will compare institutions of higher education regarding the relative cost of tuition; the retention rate of students; the graduation rate of students; the average

student debt; the loan repayment rate of students; and the employment rate of students. Each institution of higher education is required to include on its Internet website a prominent link to the information posted on the TEA's website.

SB 215 (Birdwell, et al. and Anchia), the "sunset" bill for the Texas Higher Education Coordinating Board (THECB), requires the THECB to reevaluate rules and policies on data requests at least once every five years and to consult with institutions to identify and eliminate unnecessary data requests. The bill provides a new power of the THECB to conduct risk-based compliance monitoring on institutional data reporting and requires the THECB to engage in negotiated rulemaking when adopting a rule governing data requests.

### Admissions

HB 5 (Aycock, et al. and Patrick, et al.) revises high school curriculum and testing requirements and provides for a single high school diploma and revises eligibility for TEXAS grants and college admissions accordingly. (For example, a student must complete the requirements for a distinguished level of achievement, rather than the current recommended or advanced high school program, in order to qualify for automatic admission.) The bill requires each school district to partner with an institution of higher education to develop and provide college preparatory classes in math and English language arts.

HB 1843 (Branch and Seliger) extends through the 2017-2018 academic year the cap on automatic admissions at UT Austin under the "top 10%" law.

HB 2550 (Patrick and Zaffirini) requires the institution of higher education closest in geographic proximity to a public high school that is substantially below the state average in the number of graduates who enroll in higher education to enter into an agreement with that high school to develop a plan to increase the number of students from that high school enrolling in higher education.

SB 215 (Birdwell, et al. and Anchia), the "sunset" bill for the Texas Higher Education Coordinating Board (THECB), requires the THECB to engage in negotiated rulemaking when adopting a rule related to admission policies.

SB 1159 (Van de Putte and Diane Patrick) requires graduate and professional programs to grant re-admission or re-enrollment to any veteran who was initially offered admission but could not enroll or had to withdraw because of deployment.

### Formula Funding

SB 31 (Zaffirini and Diane Patrick) excludes from the instruction and operations formula semester credit hours earned by a high school student for dual credit unless the hours are in a core curriculum course, a career or technical course applying towards a certificate or associate's degree, or a foreign language course. The bill exempts from the prohibition credit hours earned in an early college education program.

## Programs and Courses

SB 215 (Birdwell, et al. and Anchia), the “sunset” bill for the Texas Higher Education Coordinating Board (THECB), removes the power of the THECB to close low-producing degree programs.

## Student Issues

HB 489 (Mendez and Uresti) protects the rights of disabled persons, including veterans and other persons with post-traumatic stress disorders, to be accompanied by an assistance animal in areas such as food service and dormitories.

HB 1284 (Johnson, et al. and Huffman) requires institutions of higher education to notify all incoming students of the criminal penalty for the offense of making a false alarm or report involving a public or private institution of higher education (a Class A misdemeanor). An institution must give the same notice to all currently enrolled students not later than October 1, 2013.

SB 62 (Nelson and Laubenberg) modifies the law on required proof of vaccination for bacterial meningitis, reducing from 29 to 21 and younger the age of students who must show proof of vaccination. Students seeking exemption must use the Department of State Health Services process.

SB 146 (Williams and Kolkhorst) allows institutions of higher education to access the non-public criminal history database maintained by the Texas Department of Public Safety (DPS) for the purpose of screening applications for student campus housing.

SB 1061 (Van de Putte and Menendez) permits veterans with a disabled veteran license plate to park for an unlimited amount of time in a handicapped parking place, subject to specific exceptions. The institution may require the veteran to display an institution-issued permit, but may not charge for that permit.

SB 1907 (Hegar, et al. and Capriglione, et al.) prohibits institutions of higher education from adopting rules that prevent the holder of a concealed handgun license from storing a firearm or ammunition in a locked vehicle on campus premises.

## Tuition and Fees

HB 29 (Branch, et al. and Seliger) requires each general academic teaching institution to offer a tuition payment plan in which an undergraduate’s tuition is fixed for 12 consecutive semesters.

SB 1158 (Van de Putte and Menendez) amends various provisions related to the tuition and fee exemption for certain veterans, and their spouses and children, commonly referred to as the Hazlewood exemption. The bill transfers reporting and management of the Hazlewood exemption from the Coordinating Board to the Texas Veterans Commission and establishes an endowment fund to help offset the cost of the Hazlewood legacy exemptions (exemption credits assigned to a veteran’s child).

SB 1210 (Zaffirini and Branch) provides standards that a student must meet in order to continue to receive a tuition or fee waiver or exemption in subsequent semesters, under which a graduate or undergraduate student must maintain the institution's grade point average requirement for making satisfactory academic progress toward a degree or certificate, in accordance with the institution's policy regarding eligibility for financial aid. The bill also limits waivers or exemptions for excessive semester credit hours.

### Financial Aid

SB 215 (Birdwell, et al. and Anchia), the “sunset” bill for the Texas Higher Education Coordinating Board (THECB), removes two-year institutions from participation in the B-On-Time loan program and TEXAS grants; requires the THECB to engage in negotiated rulemaking when adopting a rule regarding financial aid; and requires the THECB to publish its allocation methodologies and verify the accuracy of the application of those methodologies. The bill also provides a new power of the THECB to conduct risk-based compliance monitoring on financial aid allocated by the THECB.

## **Health Issues**

### Health Professions

HB 807 (Zerwas and Schwertner) makes psychologists employed by a governmental agency subject to oversight by the Texas State Board of Examiners of Psychologists (TSBEP), requiring those psychologists to comply with the initial and continuing licensure, oversight, continuing education, disciplinary, and compliance requirements of the TSBEP. Psychologists employed by accredited institutions of higher education remain exempt from the oversight by the TSBEP.

HB 1205 (Parker, et al. and Carona) increases from a Class A misdemeanor to a state jail felony the criminal penalty for a professional who knowingly fails to report child abuse or neglect if the professional is shown at trial to have intended to conceal the abuse or neglect. “Professional” specifically includes doctors and nurses (as well as day care employees and licensed or certified individuals such as teachers).

SB 406 (Nelson and Kolkhorst, et al.) allows physicians in certain circumstances to delegate additional prescriptive authority to advanced practice registered nurses (APRNs) and physician assistants (PAs) with appropriate supervision. Delegation of prescriptive authority is limited to class III, IV, or V controlled substances, non-prescription drugs, and dangerous drugs in clinical settings.

### Education Programs

HB 7 (Darby, et al. and Williams) expands the purposes for which the trauma facility and emergency medical services account may be appropriated to include graduate medical education (GME) programs and graduate nursing education programs.

HB 2099 (Guillen and Hinojosa) seeks to improve access to nursing education programs by authorizing the THECB to adopt an electronic common admission application form for undergraduate nursing programs at institutions of higher education and providing statutory

authority (but not appropriations) for a loan repayment assistance program for nursing faculty serving in positions that require an advanced professional nursing degree.

HB 2550 (Patrick and Zaffirini) establishes grant programs to encourage the creation of new GME programs, additional first year residency positions, and innovative programs designed to increase the number of primary care physicians in the state.

SB 215 (Birdwell, et al. and Anchia), the “sunset” bill for the THECB, prohibits that board from issuing a certificate of authority for a private postsecondary institution to grant a professional degree in Texas, or to represent that credits earned in Texas are applicable toward a professional degree, if the institution is chartered in a foreign country or has its principal office or primary educational program in a foreign country.

### Hospitals

HB 581 (Howard, et al. and Lucio) waives a public hospital’s sovereign immunity from suit and from liability in claims by nurse employees for retaliation for certain advocacy actions, including making a good faith report regarding patient care concerns, requesting a nursing peer review, refusing to engage in certain conduct or advising a nurse of their rights under the law. The bill applies to UT System hospitals.

HB 729 (Price and Deuell) permits a hospital district or a public or nonprofit hospital (including UT System hospitals) to use the DPS non-public criminal records data base when conducting criminal background checks on students enrolled in educational programs that are placed at the hospital for educational purposes.

HB 3285 (Yvonne Davis and Nelson) requires hospital infection reports beginning March 1, 2014, to include whether the infection resulted in the death of the patient while hospitalized. UT System hospitals are required to make these infection reports.

### Correctional Managed Care

SB 213 (Whitmire, et al. and Price), the “sunset” bill for the Texas Department of Criminal Justice, revises the statutes governing correctional managed care. The bill replaces the statutory assumption that The University of Texas Medical Branch at Galveston (UTMB) is a provider with references to the “contracting entity.” The bill also revises the makeup and duties of the Correctional Managed Health Care Committee, expanding the committee from five to nine members. Two of the new members must be physicians employed full-time by a medical school other than UTMB or the Texas Tech University Health Sciences Center.

## **Business Issues**

### Financial Management

HB 16 (Flynn, et al. and Ellis) requires a state agency to post on its website the agency's internal audit plan and the agency's annual audit report. The state agency is not required to post information that is confidential or excepted from public disclosure under the Public Information Act. The state auditor is to determine the time and manner in which information shall be posted and updated. A detailed summary must include the weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit plan or annual report, as well as a summary of the action taken by the agency to address deficiencies.

### Construction and Real Estate

SB 215 (Birdwell, et al. and Anchia), the "sunset" bill for the Texas Higher Education Coordinating Board (THECB), eliminates the requirement that the THECB approve construction projects and real estate acquisitions. The THECB retains the power to review those projects and acquisitions against standards adopted by the board through negotiated rulemaking.

### Information Resources

HB 2472 (Cook and Birdwell) is the "sunset bill" for the Texas Department of Information Resources (DIR), extending the life of DIR through September 1, 2021. Of particular interest to higher education, the bill authorizes the Sunset Advisory Commission to evaluate the state's overall procurement system, including any provision in state law that relates to procurement and contracting for goods and services, and present a report on its findings to the Legislature by January 1, 2021. The bill also extends the authority of the comptroller of public accounts over state purchasing processes through September 1, 2021, and makes that authority subject to sunset review.

HB 2539 (Turner, et al. and Wendy Davis) requires computer technicians (defined as individuals employed to install, repair, or otherwise service a computer for a fee) to report to a local or state law enforcement agency or the National Center for Missing and Exploited Children any images that are or that appear to be child pornography on a computer that the technician accesses in the course of his or her employment or business. Failure to report is a Class B misdemeanor.

HB 3093 (Elkins and Zaffirini) requires DIR to develop contracting standards for information resources technologies acquisition and purchases and to work with state agencies to ensure the deployment of standardized information technology contracts. In addition, HB 3093 requires the Legislative Budget Board (LBB) to establish, in consultation with DIR and the Information Technology Council for Higher Education ITCHE, criteria for use in evaluating the biennial operating plans for information technology projects.

SB 59 (Nelson, et al. and Callegari) requires the Department of information Resources (DIR) to review with (ITCHE) all DIR reports required of higher education, and sunsets those not re-adopted before September 1, 2014.

SB 1102 (Van de Putte and Larson, et al.) requires the executive director of DIR to designate a DIR employee to be the state cybersecurity coordinator.

SB 1134 (Ellis and Elkins, et al.) expands the responsibilities of the DIR regarding cybersecurity, including development of strategies and a framework for securing state agency cyberinfrastructure and assessing and mitigating cybersecurity risk, providing cybersecurity training to state agencies, and promoting public awareness of cybersecurity issues.

SB 1597 (Zaffirini and Smithee) requires each state agency to develop and biennially update an information security plan for protecting the security of the agency's information. Such plans are confidential and exempt from disclosure under the Texas Public Information Act.

SB 1610 (Schwertner and Kolkhorst, et al.) provides that, in the event of a computer security breach involving personal information of a person who does not reside in Texas, the required notice to that individual may be provided under either Texas law or the law of the state in which the person resides. Purchasing and Contracting

HB 194 (Farias, et al. and Hinojosa) expands the class of historically underutilized businesses (HUBs) to include businesses owned by veterans who have suffered at least a 20 percent service-connected disability as defined by federal law. The law requires the Comptroller of Public Accounts to adopt rules providing goals for increasing awards of state agency purchasing contracts to veteran-owned HUBs.

HB 586 (Workman, et al. and Duell, et al.) waives a state agency's sovereign immunity from suit and from liability in claims for breach of an express provision of a contract for engineering, architectural, or construction services in which the amount in controversy is \$250,000 or more. Liability is limited to the amount due under the contract, and the judgment may be paid only from funds specifically appropriated for that purpose.

HB 3116 (Cook and Schwertner) requires a state agency, including an institution of higher education, to include administration of purchasing in the agency's enterprise resource planning system (an agency's individual enterprise resource planning system must be compatible with the comptroller's uniform statewide accounting system). In addition, the bill authorizes the Comptroller to recover from vendors using the comptroller's system for purchasing goods and services any costs that result from the implementation for or use by those vendors of the uniform statewide accounting system.

### Research and Commercialization

HB 2051 (Villalba, et al. and Carona) facilitates investment in start-ups by allowing institutions to accept promissory debt instruments that are convertible into stock or cash in exchange for intellectual property rights or as consideration for providing business, scientific, or engineering service.

SB 67 (Nelson and Branch) requires an institution's annual report on human stem cell research to include the amounts spent by the institution on human embryonic stem cell research and adult stem cell research and the sources of that funding.

SB 149 (Eltife, et al. and Keffer, et al.) restructures the Cancer Prevention and Research Institute of Texas (CPRIT) and CPRIT grant processes and requirements.

## **Employees and Benefits**

### Retirement

SB 1458 (Duncan and Callegari) makes significant changes to the Teacher Retirement System, including an increase in the member contribution rate from the current 6.4% of annual compensation to 7.7%, phased in over four years. Also, for members not vested on or before August 31, 2014, eligibility to retire will now require the member to be either 65 years of age with at least 5 years of service or 62 years of age with the rule of 80.

### Health Benefits

HB 1869 (Price, et al. and Duncan) limits the amount health insurance plans can recover through subrogation rights to cover the cost of the health care services that the health plan provided to an injured person who obtains a recovery through litigation. The plans to which the bill applies include the UT System health plan and other state employee government plans. Under the law, if the injured person was represented by an attorney the health plan can recover not more than 1/3 of the injured person's recovery; if the injured person was not represented by an attorney, the health insurance plan is limited to 1/2.

HB 2020 (Crownover, et al. and Deuell) increases the flexibility of state agencies in developing a wellness program and expressly allows financial incentives for participation.

HB 2929 (Sheets and Deuell) prohibits health insurance plans, including the UT System employer health plan, from placing limits on the number of days the plan will cover for post-acute treatment of acquired traumatic brain injuries. It requires the plan to provide coverage beyond the terms of coverage provided by the plan, including the number of days available for post-acute care, if the plan member's physician determines that additional care is medically necessary.

SB 1609 (Schwertner and Kolkhorst, et al.) extends from 60 to 90 days after hiring the period within which a new state employee must be trained in regard to state and federal laws governing the maintenance and use of protected health information. The bill also replaces the requirement that all employees be retrained every two years with a requirement that employees be trained within one year after a material change in state or federal law that affects an employee's duties.

### Compensation and Leave

HB 480 (Alvarado and Cortez) expands existing law to allow state employees to use up to eight hours of sick leave to attend educational activities of the employee's children, including activities such as tutoring, field trips, classroom programs, and academic competitions.

HB 12 (Flynn, et al. and Zaffirini) establishes various reporting requirements related to gifts received by a state agency, including an institution of higher education, that the donor designates be used as a salary supplement for an employee and requires the governing board to adopt a

conflict of interest rule or policy regarding acceptance of such gifts to be used as a salary supplement. The bill also requires an agency or institution to post on the agency's website a list of information regarding staff and compensation, including the methodology for executive compensation and the compensation market average for executive staff.

### Employment

SB 1907 (Hegar, et al. and Capriglione, et al.) prohibits institutions of higher education from adopting rules that prevent the holder of a concealed handgun license from storing a firearm or ammunition in a locked vehicle on campus premises.

### Criminal Liability

HB 2539 (Turner, et al. and Wendy Davis) requires computer technicians (defined as individuals employed to install, repair, or otherwise service a computer for a fee) to report to a local or state law enforcement agency or the National Center for Missing and Exploited Children any images that are or that appear to be child pornography on a computer that the technician accesses in the course of his or her employment or business. Failure to report is a Class B misdemeanor.

SB 406 (Nelson and Kolkhorst, et al.) allows physicians in certain circumstances to delegate additional prescriptive authority to advanced practice registered nurses (APNs) and physician assistants (PAs) with appropriate supervision. Delegation of prescriptive authority is limited to class III, IV, or V controlled substances, non-prescription drugs, and dangerous drugs in clinical settings.

## **Governance and Administrative Issues**

### New Institutions and Schools

SB 24 (Hinojosa, et al. and Oliveira, et al.) creates a new general academic teaching institution in south Texas within the UT System. The new university will absorb the facilities and operations of U.T. Pan American, U.T. Brownsville, the authorized (but not currently operational) U.T. Health Science Center—South Texas, and the Lower Rio Grande Valley Academic Health Center (RACH). U.T. Pan American and U.T. Brownsville will be abolished as separate entities at a future date, determined by the board of regents, when the new university is accredited and operational. The new university will be eligible to benefit from the Permanent University Fund.

SB 566 (Eltime, et al. and Clardy, et al.) authorizes the UT board of regents to create a pharmacy school at UT Tyler that would be supported by tuition and philanthropy and would not receive state appropriations.

### Board of Regents

HB 31 (Branch, et al. and Zaffirini) requires boards of regents to webcast and archive for Internet access regularly scheduled meetings of the board. The board must also post in advance of such a

meeting the written agenda and related supplemental written materials, not including information excepted from disclosure under the public information law.

HB 2414 (Button, et al. and Deuell) allows members of state governing bodies, including regents, to participate remotely through electronic means in a meeting for which there is an audio and video broadcast; only the officer presiding is required to be present at the location posted for the meeting. The bill also allows governing board members to communicate with each other through a publicly viewable internet message board (as does SB 1297 (Watson and Branch)).

SB 984 (Ellis and Perry) removes the requirement that a majority of a quorum of a governmental body be present at the physical location of a meeting held by videoconference, and requires a videoconference to be recessed if the meeting is not visible and audible to the public at the posted location.

SB 1604 (Zaffirini and Howard) allows the UT board of regents to appoint a qualified individual, as determined by the board, in the place of the chancellor on the governing board of The University of Texas Investment Management Company (UTIMCO).

#### Reporting

SB 59 (Nelson, et al. and Callegari), an omnibus bill relating to required reports of state agencies, preserves from repeal various higher education reports, such as the annual operating budget, that would have otherwise been repealed under the terms of SB 5 from the previous legislative session. The bill also repeals or modifies a few other reports required of higher education.

### **Proposed Constitutional Amendments**

*The 83<sup>rd</sup> Legislature proposed 10 constitutional amendments to be considered by the voters, only one of which directly affects higher education.*

HJR 79 (Branch, et al. and Birdwell) proposes a constitutional amendment to eliminate an obsolete constitutional requirement for a State Medical Education Board and State Medical Education Fund. Established to provide loans to medical students who agreed to practice in rural and other medically underserved areas, the program had limited success. No new loans have been issued in more than 25 years, and the board has no appointees and receives no funding. The amendment will be on the ballot for the November 5, 2013 general election.

## Studies and Advisory Committees

**The 83<sup>rd</sup> Legislature commissioned studies and provided for advisory committees that may affect higher education, particularly health-related institutions. Sometime in the fall of 2013 or spring of 2014, the speaker and lieutenant governor will make additional study charges to special and standing legislative committees.**

HB 15 (Kolkhorst, et al. and Nelson, et al.) creates the Perinatal Advisory Council under the Health and Human Services Commission to develop recommendations related to neonatal and maternal care and the assignment of levels of care to a hospital for neonatal and maternal care. The 17 members are to be appointed by the HHSC executive commissioner, with several positions designated for physicians and nurses. To the extent possible, the executive commissioner is directed to appoint to the advisory council persons who previously served on the Neonatal Intensive Care Unit Council created by the 82nd Legislature.

HB 1777 (Moody, et al. and Rodriguez) directs the Border Trade Advisory Committee of the Texas Department of Transportation to study the effect of wait times at points of entry between the U.S. and Mexico. The U.T. Austin Center for Transportation Research is represented on the committee.

HB 2036 (Branch and Watson, et al.) creates the Texas 2036 Commission to assess and identify future higher education and workforce needs, looking toward the Texas bicentennial in 2036. The commission is to develop recommendations, specifically including recommendations for increasing by at least three the number of institutions designated as research institutions. Among the 11 members of the commission, the governor is to appoint the chair of a board of regents. In addition, the lieutenant governor and the speaker are to each appoint a person with experience in the field of education. Appointed members of the commission serve two-year terms.

HB 2103 (Villarreal et al. and Seliger) directs the commissioner of higher education to establish the Education Research Center Advisory Board for the purpose of reviewing study proposals and ensuring appropriate data use at education research centers (ERCs). The board must include the director of each education research center. Education research centers must be part of an institution of higher education or a consortium of institutions. UT Austin and UT Dallas host ERCs.

HB 3093 (Elkins and Zaffirini) requires the Department of Information Resources (DIR), in consultation with the Information Technology Council for Higher Education (ITCHE) and the Legislative Budget Board (LBB), to review existing statutes, procedures, data, and organizational structures to identify opportunities to increase efficiency, customer service, and transparency in information resources technologies.

HCR 82 (Hunter, et al. and Hinojosa) requests that the lieutenant governor and speaker create a joint interim committee to study education policy as it relates to developing a skilled workforce.

SB 59 (Nelson, et al. and Callegari) requires the Department of Information Resources (DIR) to review with the Information Technology Council for Higher Education (ITCHE) all DIR reports required of higher education, and sunsets those not re-adopted.

SB 414 (Ellis, et al. and Sarah Davis, et al.) requires the THECB to conduct a study of regional workforce needs to determine the regions that would benefit from the authorization of baccalaureate degree programs in nursing, or in applied sciences, at public junior colleges. The statute requires the THECB to consult with at least one representative of a four-year institution of higher education and with other entities the commissioner considers appropriate.

SB 495 (Huffman, et al. and Walle, et al.) creates the Maternal Mortality and Morbidity Task Force under the Department of State Health Services. The 15-member task force is to include several positions designated for physicians of various specialties, a registered nurse, and a licensed nurse midwife. The statute specifically authorizes the department to enter into agreements with institutions of higher education for purposes related to the duties of the task force.

SB 1101 (Van de Putte and Larson) extends the life of the Cybersecurity, Education, and Economic Development Council through September 1, 2015. The council membership includes two representatives of institutions of higher education with cybersecurity-related programs.

SB 1159 (Van de Putte and Diane Patrick) directs the Legislative Budget Board (LBB), with support from the veterans commission and the coordinating board, to study and evaluate the tuition and fee Hazlewood exemption, with recommendations to be submitted to key state officials by December 1, 2014.

SB 1773 (Huffman, et al. and Dennis Bonnen) creates a select interim committee to review and make recommendations for substantive changes to ethics laws, including the personal financial disclosure laws under which certain higher education regents and officers file statements. The committee will include three senators and a public member named by the lieutenant governor, three representatives and one public member named by the speaker, and the presiding officer of the Texas Ethics Commission.

The Joint Oversight Committee on Higher Education Governance, Excellence, and Transparency, created by proclamation of the lieutenant governor and speaker in 2011 for the 82<sup>nd</sup> Legislature, was continued in effect by the presiding officers for the 83<sup>rd</sup> Legislature.

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## Institutional Information

[HB 798](#) by Thompson and Garcia

Relating to certain actions taken by certain licensing authorities regarding a license holder or applicant who has been convicted of a Class C misdemeanor.

HB 798 amends Section 53.021 of the Occupations Code by adding an exemption of Class C misdemeanors from those offenses for which a person may have their occupational license suspended or revoked, or be denied a license. This part of the Occupations Code does not cover licenses for law enforcement services, public health, education, or safety services, or certain financial services.

**Impact:** UT System institutions with teaching programs that can lead to licenses covered by the law should be informed of this change and should inform potential students entering those programs.

**Effective:** September 1, 2013

Dan Sharphorn

[HB 912](#) by Gooden, et al. and Estes

Relating to images captured by unmanned aircraft and other images and recordings; providing penalties.

HB 912 would enact the Texas Privacy Act (the “Act”). It would define terms, specify exceptions to applicability, and provide for criminal penalties and civil action.

HB 912 defines “image” as any capturing of sound waves, thermal, infrared, ultraviolet, visible light, or other electromagnetic waves, odor, or other conditions existing on or about real property or an individual located on that property.

HB 912 is not applicable in the following circumstances:

- HB 912 does not apply to images of real property or an individual on real property captured by an unmanned vehicle or unmanned aircraft for purposes of professional or scholarly research and development on behalf of an institution of higher education. This would include images taken by professors, employees, or students of the institution or people who were under contract with or otherwise acting under the direction or on behalf of the institution.
- HB 912 does not apply to airspace designated as a test site or range authorized by the Federal Aviation Administration for the purpose of integrating unmanned aircraft systems into the national airspace, or to an operation, exercise, or mission of any branch of the U.S. Military.

- HB 912 does not apply to images captured by or for an electric or natural gas utility for operations and maintenance of utility facilities for the purpose of maintaining utility system reliability and integrity; for inspecting utility facilities to determine repair, maintenance, or replacement needs during and after construction of such facilities; for assessing vegetation growth for the purpose of maintaining clearances on utility easements; and for utility facility routing and siting for the purpose of providing utility service.
- HB 912 does not apply to images captured with the consent of the individual who owns or lawfully occupies the real property captured in the image.
- HB 912 does not apply to images captured pursuant to a valid search or arrest warrant;
- HB 912 does not apply if the image is captured by a law enforcement authority or a person who is under contract with or otherwise acting under the direction or on behalf of a law enforcement authority: (A) in immediate pursuit of a person law enforcement officers have reasonable suspicion or probable cause to suspect has committed an offense, not including misdemeanors or offenses punishable by a fine only; (B) for the purpose of documenting a crime scene where an offense, not including misdemeanors or offenses punishable by a fine only, has been committed; (C) for the purpose of investigating the scene of a human fatality; a motor vehicle accident causing death or serious bodily injury to a person; or any motor vehicle accident on a state highway or federal interstate or highway; (D) in connection with the search for a missing person; (E) for the purpose of conducting a high-risk tactical operation that poses a threat to human life; or (F) of private property that is generally open to the public where the property owner consents to law enforcement public safety responsibilities.
- HB 912 does not apply if the image is captured by state or local law enforcement authorities, or a person who is under contract with or otherwise acting under the direction or on behalf of state authorities, for the purpose of: (A) surveying the scene of a catastrophe or other damage to determine whether a state of emergency should be declared; (B) preserving public safety, protecting property, or surveying damage or contamination during a lawfully declared state of emergency; or (C) conducting routine air quality sampling and monitoring, as provided by state or local law.
- HB 912 does not apply to an image captured at the scene of a spill, or a suspected spill, of hazardous materials.
- HB 912 does not apply to an image captured for the purpose of fire suppression.
- HB 912 does not apply to images captured for the purpose of rescuing a person whose life or well-being is in imminent danger.

- HB 912 does not apply if the image captured by a Texas licensed real estate broker in connection with the marketing, sale, or financing of real property, provided that no individual is identifiable in the image.
- HB 912 does not apply if an image is captured of real property or a person on real property that is within 25 miles of the United States border;
- HB 912 does not apply if an image is from a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception.
- HB 912 does not apply to an image of public real property or a person on that property;
- HB 912 does not apply if the image is captured by the owner or operator of an oil, gas, water, or other pipeline for the purpose of inspecting, maintaining, or repairing pipelines or other related facilities, and is captured without the intent to conduct surveillance on an individual or real property located in this state.
- HB 912 does not apply in connection with oil pipeline safety and rig protection.
- HB 912 does not apply in connection with port authority surveillance and security.

HB 912 provides for criminal penalties. Pursuant to HB 912, it would be a class C misdemeanor (maximum fine of \$500) to use or authorize the use of an unmanned aircraft to capture an image of an individual or real property with the intent to monitor or conduct surveillance on the individual or real property captured in the image. The term “intent” has the same meaning assigned by Section 6.03 of the Penal Code. It would be a defense to prosecution against this offense that the person destroyed the image as soon as he or she had knowledge that it was captured in violation of the bill, and without disclosing, displaying, or distributing it to a third party.

Pursuant to HB 912, it would also be it would be a Class C misdemeanor (maximum fine of \$500) to possess, display, disclose, distribute, or otherwise use an image captured in violation of the Act. Each image in violation of this offense would be a separate offense. It would be a defense to prosecution for possession if the person destroyed the image as soon as he or she had knowledge that it was captured in violation of the Act.

HB 912 also provides that it would be a Class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) for disclosure, display, distribution, or other use of an image. It would be a defense to disclosure, display, distribution, or other use if the person stopped disclosing, displaying, distributing, or otherwise using the image as soon as they had knowledge that it was captured in violation of the Act.

HB 912 further provides that images captured in violation of the Act, or an image captured by an unmanned aircraft that was incidental to the lawful capturing of an image:

- could not be used as evidence in any criminal or juvenile proceeding, civil action, or administrative proceeding;
- would not be subject to disclosure, inspection, or copying under the Public Information Act; and
- would not be subject to discovery, subpoena, or other legal compulsion for its release.

These images could be disclosed and used as evidence to prove a violation of the Act and would be subject to discovery, subpoena, or other legal compulsion for that purpose.

Finally, HB 912 provides for a civil right of action. Pursuant to the Act, an individual who was the subject of an image — or who owned or who was a tenant of privately owned real property that was the subject of an image — captured, possessed, disclosed, displayed, distributed, or otherwise used in violation of the bill could bring a civil action to enjoin a violation or imminent violation of the bill; and recover a civil penalty of:

- \$5,000 for all images captured in a single episode;
- \$10,000 for disclosure, display, distribution, or other use of any images captured in a single episode; or
- actual damages if the disclosure, display, or distribution of the image was done with malice.

Courts would be required to award court costs and reasonable attorney's fees to the prevailing party. Venue would be governed by the Civil Practice and Remedies Code. The statute of limitations would be two years from the date the image was captured or two years from the date the image was first possessed, displayed, distributed, or otherwise used in violation of the Act.

HB 912 requires that the Department of Public Safety adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in this state.

HB 912 requires that no earlier than January 1 and not later than January 15 of each odd-numbered year, each state law enforcement agency and each county or municipal law enforcement agency located in a county or municipality, as applicable, with a population greater than 150,000 that used or operated an unmanned aircraft during the preceding 24 months issue a written report to the governor, the lieutenant governor, and each member of the legislature and must retain the report for public viewing; and post the report on the law enforcement agency's publicly accessible website, if one exists.

The report must include: the number of times an unmanned aircraft was used, organized by date, time, location, and the types of incidents and types of justification for the use;

the number of criminal investigations aided by the use of an unmanned aircraft and a description of how the unmanned aircraft aided each investigation; the number of times an unmanned aircraft was used for a law enforcement operation other than a criminal investigation, the dates and locations of those operations, and a description of how the unmanned aircraft aided each operation; the type of information collected on an individual, residence, property, or area that was not the subject of a law enforcement operation and the frequency of the collection of this information; and the total cost of acquiring, maintaining, repairing, and operating or otherwise using each unmanned aircraft for the preceding 24 months.

**Impact:** HB 912 has no direct impact on UT System institutions. However, to the extent police departments at each institution utilize unmanned aircrafts, each should be aware of this legislation and its possible impact as it relates to use of such technology.

**Effective:** September 1, 2013

Melissa V. Garcia

[HB 1844](#) by Branch, et al. and West

Relating to the official name of The University of Texas Southwestern Medical Center.

This bill modifies various statutory references to The University of Texas Southwestern Medical Center at Dallas to change the name to The University of Texas Southwestern Medical Center, deleting the “at Dallas” reference. Updates to other statutes are made regarding other agencies and institutions to bring them in line with current practice and names.

**Impact:** This bill should have no practical impact since this name change for The University of Texas Southwestern Medical Center is already incorporated into the Regents’ Rules and in the everyday operations of the institution.

**Effective:** September 1, 2013

Melodie Krane

[SB 24](#) by Hinojosa, et al. and Oliveira, et al.

Relating to the creation of a new university in south Texas within The University of Texas System.

This bill establishes a general academic teaching institution in south Texas within the UT System that includes:

- in Cameron County, an academic campus with other academic operations;
- in Hidalgo County, an academic campus with other academic operations;

- in Starr County, an academic center;
- a medical school and other programs in south Texas as previously authorized by the 81st Legislature; and,
- the Lower Rio Grande Valley Academic Health Center (RACH) facilities and operations previously authorized.

The UT System Board of Regents (BOR) is authorized to organize, administer, locate and name the new institution, its colleges, schools, and other institutions. The BOR shall make rules and regulations as necessary to establish a university of the first class. The primary facilities and operations of the university must be equitably allocated among Cameron, Hidalgo, and Starr counties. The programs of the medical school component are to be conducted throughout the region with a substantial presence in Hidalgo and Cameron County while providing interdisciplinary education across health professions. The BOR may solicit and accept gifts and grants on behalf of the university.

The BOR may prescribe courses leading to degrees and may award degrees, including: bachelor's, master's and doctoral degrees and their equivalents as well as medical school degrees and other health science degrees. Such degree programs require approval of the Higher Education Coordinating Board. Courses may include any course or program previously authorized for UT Pan American or UT Brownsville. Joint faculty appointments are authorized.

The university is entitled to participate in the Permanent University Fund to the same extent as similar institutions of the UT System.

The Center for Border Economic and Enterprise Development and The Texas Academy of Mathematics and Science, existing programs at UT Pan American and UT Brownsville, are continued under the new university.

#### The University of Texas Health Science Center—South Texas

A medical school is part of the health science center. The administrative offices of the health science center are to be located in Hidalgo and Cameron counties with the offices overseeing undergraduate medical education located in Hidalgo County and the offices overseeing graduate medical education in Cameron County. Educational programs for first and second year medical students will be primarily in Hidalgo County while educational programs for third and fourth year medical students will be primarily in Cameron County. Educational programs are to take advantage of existing educational facilities and programs.

#### UT Pan American and UT Brownsville.

UT Pan American and UT Brownsville are abolished upon action by the BOR, the effective date of which cannot be earlier than the date upon which the new south Texas university begins operation. The BOR retains all powers and duties related to the abolished institutions. Employment of faculty and staff of the abolished universities is to

be facilitated by the BOR while students of the abolished universities are entitled to admission to the new south Texas university. The partnership between UT Brownsville and Texas Southmost College shall continue until August 31, 2015 to the extent necessary to ensure accreditation.

**Impact:** The development, coordination, administration and management of a new university, particularly one including a medical school, are a significant undertaking that will impact the UT System and south Texas for many years. The BOR, System Administration staff and staff of the new south Texas university will be involved in every aspect of this new development.

**Effective:** June 14, 2013

Melodie Krane

**SB 215** by Birdwell, et al. and Anchia

Relating to the continuation and functions of the Texas Higher Education Coordinating Board, including related changes to the status and functions of the Texas Guaranteed Student Loan Corporation.

SB 215 makes numerous changes to the Texas Higher Education Coordinating Board (THECB) functions and programs that include the following relevant to university systems and institutions of higher education:

- The bill redefines the Board's powers and duties to reflect the major functions of a higher education coordinating entity and provides that the THECB has only the powers provided by law, reserving the governance of institutions to their governing boards. The bill adds the requirement for the THECB to develop a long-range master plan that will require the board to re-evaluate the role and mission of each general academic teaching institution. The role of the THECB in establishing best practices and pilot programs is redefined and provides limitations when establishing such programs. The bill requires the THECB to administer a pilot program at selected institutions no later than January 1, 2014 to ensure that students are informed consumers with regard to student financial aid.
- SB 215 requires the Board to establish a policy on an agency-wide risk-based compliance monitoring function for ensuring: (1) that funds allocated by the THECB to the institution are distributed in accordance with law and rule; and (2) that data reported by institutions to the THECB and used for funding or policymaking decisions is correct. Factors in developing the policy and provisions on conducting the review (ex: partnering with institution's audit department; announced or un-announced visits) are included in the bill, as are notification procedures when the THECB determines through the compliance monitoring process that funds were misused or misallocated by an institution, or if there were errors in formula funding. Any final determination is reported to the institution's governing board and in determinations of formula funding errors,

revisions to the appropriated amount would be calculated and reported to the governor, LBB, and comptroller.

- SB 215 requires the THECB to engage in negotiated rulemaking with university systems and institutions to identify unnecessary requests for information to eliminate them or ways to streamline the requests. The THECB is also required to engage affected institutions in negotiated rulemaking processes when adopting a policy, procedure, or rule relating to admissions policies, the allocation or distribution of funds (including financial aid or other trustee programs), certain data requests, its new compliance monitoring function, and standards to guide the board's review of new construction and the repair and rehabilitation of buildings and facilities. The THECB is also to establish methods for obtaining input from stakeholders and the general public when developing the long range master plan, implement policies to provide opportunities for public comment at each board meeting, and adopt policies for forming advisory committees.
- The bill amends the process for THECB approval of new degrees or certificate programs and provides new criteria used for the program review. The bill includes new provisions pertaining to consolidation or elimination of degree or certificate programs and allowing off-campus courses for credit within the state or distance learning courses. The bill removes the authority of the THECB to close low-producing programs.
- The bill removes the authority of the THECB to approve new construction and repair and rehabilitation projects or real estate acquisitions, limiting their duties to review of those activities and requiring the THECB to adopt standards, through negotiated rulemaking, to guide their review.
- SB 215 amends various provisions within the TEXAS Grant program, limiting eligibility to those students enrolled in a baccalaureate degree program and removing 2-year colleges from eligibility for TEXAS grant funding. The bill also requires the THECB to allocate the TEXAS grant funding "proportionally" among the remaining eligible institutions.
- SB 215 amends provisions within the Texas B-On-Time program. The changes limit the program to students earning baccalaureate degrees and limits eligibility to general academic teaching institutions except for state colleges, medical and dental units offering baccalaureate degrees, or private or independent institutions of higher education that offer baccalaureate degree programs. The bill also requires that the THECB, in collaboration with eligible entities, adopt and implement measures to improve participation in the program and improve the rate of student satisfaction of the program terms. Institutions with a loan forgiveness rate of less than 50% statewide or whose default exceeds the statewide average will be required to give training to all loan recipients enrolled at their institution.
- As to student loans, the bill converts the Texas Guaranteed Student Loan Corporation from a public nonprofit corporation to a nonprofit corporation under

Chapter 22 of the Business Organization Code. The bill also changes the venue to Travis County in default suits for student loans authorized by Education Code Chapter 52.

- The bill amends various provisions within the Norman Hackerman Advanced Research Program, including administration of the program by the THECB. The Research University Development Fund provisions have also been modified: the bill changes the name of the fund to the Texas Competitive Knowledge Fund and changes the eligibility factors and funding.
- This bill requires that additional information and certification be provided by a governing board in its annual report to the THECB of each institution's list of courses. The bill also requires institutions to annually report to the governing board of the institution information regarding the condition of the buildings and facilities of the institution, including information concerning deferred maintenance with respect to those buildings and facilities as defined by the THECB.

**Impact:** The bill directly impacts UT System and its institutions since it makes significant changes in the authority of the THECB, resulting in numerous modifications to programs administered by the board. Of greatest importance, the THECB will be required to adopt a number of rules affecting the institutions in which the UT System and its institutions, through rulemaking or statutory directive, will be directly involved, the bill requires that a new compliance monitoring program be established through rulemaking and requires further information and certification by the Board of Regents in its annual list of courses and an annual report to the Board of Regents regarding the condition of its buildings and facilities.

**Effective:** September 1, 2013

Helen Bright

**SB 1531** by Seliger and Branch

Relating to providing information to entering undergraduate students at certain general academic teaching institutions to promote timely graduation.

SB 1531 requires that each general academic teaching institution provide to each first-time entering undergraduate student, including each undergraduate student who transfers to the institution, a statement that includes: a comparison of the average total academic costs paid by a full-time student who graduates from the institution in the four, five and six academic years; and an estimate of the average earnings lost by a recent graduate of the institution as a result of graduating after five or six years instead of four years. This information must be provided to each student in electronic or paper format. SB 1531 also allows the statement of information provided to each student to be more specific than is required by the bill.

SB 1531 also requires each general academic teaching institution to include with the statement a list of actions that the student can take to facilitate graduating from the institution in a timely manner; and contact information for available academic, career, and other related support services at the institution to assist the student in that effort.

SB 1531 provides that these requirements apply beginning with undergraduate students who initially enroll in a general academic teaching institution for the 2014 fall semester.

**Impact:** UT System academic institutions are all impacted by this bill. Each academic institution must be prepared to provide the required statement of information and list of actions to undergraduate students by the 2014 fall semester.

**Effective:** September 1, 2013

Melissa V. Garcia

### **Admissions and Advising**

**[HB 5](#)** by Aycock, et al. and Patrick, et al.

Relating to public school accountability, including assessment, and curriculum requirements; providing a criminal penalty.

The summary focuses on the major areas impacted by this omnibus education bill which primarily affects charter schools of UT System institutions but also directly impacts UT System institutions.

Assessments:

- Section 31 amends Section 39.023 of the Education Code and requires that the Texas Education Agency (TEA) redevelop assessments administered to significantly cognitively disabled students in a manner consistent with federal law. Such an assessment may not require a teacher to prepare tasks or materials for a student who will be taking such a test. In addition, Section 31 amends Section 39.023 such that many of the end-of-course/State of Texas Assessments of Academic Readiness (STAAR) for secondary-level courses are eliminated. The ones that remain are Algebra I, Biology, US History, and combined/reading and writing tests for English I and II. These remaining assessments will no longer account for 15% of a student's grade for the course. These changes go into effect during the 2013-2014 school year. Section 31 also details the release schedule for STAAR assessment question and answer keys and requires that all assessment results be reported within 21 days after the test is administered.
- Section 34 amends Section 39.0238 of the Education Code and requires the TEA to adopt or develop postsecondary readiness assessment instruments for Algebra II and English III that are optional for a school district's use. A school district that opts to administer the assessment must administer the assessment to each student enrolled in a course for which a postsecondary readiness assessment

instrument is adopted or developed and must report the results to the TEA. The TEA may not use the results for accountability purposes for a school campus or district; a school district may not use the results for the purpose of teaching evaluations or determining a student's final course grade or class rank for the purpose of graduation; and an institution of higher education may not use the results for admission purposes or to determine eligibility for a TEXAS grant.

- Section 35 amends Section 39.025 of the Education Code such that the Commissioner of the TEA (Commissioner) is required to implement a method where an advanced placement test, international baccalaureate test, SAT subject test, the SAT, ACT, PSAT or ACT-Plan, or any other national recognized test used by institutions of higher education to award credit may be used to satisfy the end-of-course assessment requirements for graduation in an equivalent course. In addition, a student enrolled in a college preparatory course who satisfies the Texas Success Initiative requirements including the college readiness benchmarks on an assessment adopted by the Texas Higher Education Coordinating Board (THECB) also satisfies the end-of-course assessment requirements in an equivalent course. Finally, an admission, review and dismissal committee for a special education student will determine whether the student needs to pass an end of course assessment to receive a high school diploma.
- Section 37 adds Section 39.0263 of to the Education Code and prohibits a school district from administering more than two benchmark assessment instruments to a student to prepare the student for a corresponding state-administered assessment. This provision does not apply to a college preparation assessment including the PSAT, ACT-Plan, SAT, ACT, an advance placement test, an international baccalaureate test or classroom examination adopted and administered by a teacher.
- Section 32 amends Section 39.0232 of the Education Code and prohibits the use of an end-of-course assessment in determining a student's class ranking for any purpose, including entitlement to automatic college admission or as a sole criterion in the determination of whether to admit the student to a general academic teaching institution in Texas.

#### High School Foundation Program:

- Section 16 amends Section 28.025 of the Education Code by eliminating the Minimum, Recommended, and Distinguished Achievement High School Programs beginning in the 2014-2015 school year and creating the High School Foundation Program (foundation program). The Commissioner must adopt a transition plan to implement the foundation program.
- A student who enters ninth grade before the 2014-2015 school year can complete the curriculum requirements for graduation under the foundation program or the high school program he or she had been participating in prior to the 2014-2015 school year. The Commissioner must allow a student to graduate if he or she is

completing his or her fourth year of high school during the 2013-2014 school year and does not meet the curriculum requirements of the high school program he or she was participating in if that person would meet the requirements established under the foundation program.

- Upon entering ninth grade, each student must indicate, in writing, which endorsement the student intends to earn. There are five distinct endorsements: science, technology, engineering, and mathematics (STEM); business and industry; public services; arts and humanities; and multidisciplinary studies. A student can graduate under the foundation program without an endorsement if the student and the student's parent or guardian are advised by a school counselor of the benefits of graduating with an endorsement and if the student's parent or guardian files with the counselor written permission allowing the student to graduate without an endorsement.
- The State Board of Education (SBOE) must require the foundation program to include the successful completion of: four credits in English language arts including English I, II, and III and an advanced course; three credits in mathematics including Algebra I, geometry, and an advanced mathematics course; three credits in science including biology, an advanced science course, and integrated physics and chemistry or another advanced science course; three credits in social studies including US History, one-half credit in US Government, one-half credit in economics, and a combined world history/world geography course; two credits in the same language other than English or two credits in computer programming; one credit in fine arts, one credit in physical education, and five elective credits. Certain substitutions for these courses may or must be allowed. A student may earn a distinguished level of achievement under the foundation program by successfully completing all of the required curricula as well as: an additional credit in mathematics which must include Algebra II, an additional science course, and the curriculum requirements for at least one endorsement.
- In order to earn an endorsement the SBOE must require a student to also successfully complete, in addition to the required curricula: four credits in mathematics, which must include an advanced mathematics course or an advanced career and technology course; four credits in science, which must include an advanced science course or an advanced career and technology course, and two additional elective credits. The SBOE must adopt the curriculum requirements for each endorsement, with the direct participation of educators and business, labor and industry representatives. The SBOE must provide students with multiple options for earning each endorsement. Prior to a student's junior year the SBOE, must allow a student to enroll in courses under more than one endorsement curriculum. Each school district must make available courses that allow a student to complete the curriculum requirements for at least one endorsement. A school district that offers only one endorsement curriculum must offer the multidisciplinary studies curriculum.

- The SBOE, with the THECB, must adopt rules to ensure that a student who successfully completes the courses in the core curriculum of an institution of higher education has complied with the foundation program or for an endorsement.
- A student may also earn a performance acknowledgement by satisfying requirements adopted by the SBOE and for earning a nationally or internationally recognized business or industry certificate or license or for outstanding performance: in a dual credit course; bilingualism and biliteracy; on a college advanced placement or international baccalaureate exam; or on the PSAT, the ACT-Plan, the SAT, or the ACT.
- At the end of each school year, each school district must report through the Public Education Information Management System (PEIMS) the number of students within the district who: enrolled in the foundation program, pursued the distinguished level of achievement, and enrolled in a program to earn an endorsement.

Accountability:

- Section 42 amends Section 39.053 of the Education Code and requires the Commissioner to consider new indicators of student achievement to evaluate district and campus performance. This provision takes effect during the 2013-2014 school year. The new indicators include: the percentage of students who successfully completed the curriculum requirements for distinguished level of achievement under the foundation program; the percentage of students who successfully completed the curriculum requirements for an endorsement under the foundation program; and at least three other additional indicators. These additional indicators must include either the percentage of students who satisfy the Texas Success Initiative college readiness benchmarks on an assessment instrument in reading, writing or math or the number of students who earn: an associate's degree; an industry certification; at least 12 hours of postsecondary credit required for the foundation program; or at least 30 hours of postsecondary credit required for the foundation program or an endorsement. An indicator under Subsection (c) cannot negatively affect the Commissioner's review of a school district or campus if that institution is already achieving at the highest level for that indicator. In addition, in computing dropout and completion rates, the Commissioner shall exclude students who were previously reported as dropouts, including a student who is reported as dropout, reenrolls and then drops out again, regardless of the number of times of reenrollment and dropping out.
- Section 44 amends Section 39.054 of the Education Code and requires the Commissioner to evaluate school district and campus performance and assign each district a performance rating of A, B, C, D, or F. The Commissioner is required to determine the criteria for each designated performance rating. A rating of A, B, or C reflects acceptable performance. A rating of D or F reflects unacceptable performance. In addition, the Commissioner shall assign each

campus a performance rating of exemplary, recognized, acceptable and unacceptable, with the first three representing acceptable performance and the final rating reflecting unacceptable performance. A district may not receive a rating of A if any campus within the district is rated as unacceptable. The performance rating of each district and campus must be made public by August 8 each year. This section takes effect during the 2016-2017 school year.

- Section 46 adds Section 39.0545 to the Education Code and requires districts to evaluate and assign a rating for district and campus performance in community and student engagement. A school district must evaluate a number of categories of performance at each campus including, but not limited to, fine arts, wellness and physical education, and opportunities for students to participate in community service projects. This section takes effect during the 2013-2014 school year.
- Sections 49-52 amend Sections 39.082, 39.0923, 39.083 of the Education Code and add 39.0824 to the Education Code. These provisions all relate to financial accountability. The School and Charter Financial Integrity Rating System of Texas (FIRST) and financial solvency system are combined into a single accountability rating system for school districts and open enrollment charter schools. The Commissioner is to adopt indicators and assign a point value to each indicator. The indicators adopted will be evaluated at least once every three years. Each open enrollment charter school and school district will receive a financial accountability rating which will be made public by August 8 each year. The Commissioner shall adopt rules necessary to implement the changes by March 1, 2015. A school district or open enrollment charter school that receives the lowest rating must submit a corrective action plan to the Commissioner to address the financial weaknesses and strategies for improvement. The Commissioner may impose sanctions for failure to submit or implement a required corrective action plan. This provision goes into effect beginning with the 2014-2105 school year.
- Sections 53-55 amend Sections 39.201-39.203 of the Education Code and require the Commissioner to award distinction designations for outstanding performance in attainment of postsecondary readiness as well as in improvement of student achievement and performance, in closing student achievement differentials, and in academic achievement only for English language arts, math, science, and social studies. The Commissioner will consider additional factors when making a designation and such designations will be made publicly available with the performance ratings.
- Section 58 adds Section 39.309 of the Education Code and requires the TEA to develop a website known as the Texas School Accountability Dashboard for the public to access district and campus accountability information. Finally, under Section 60, which adds Section 39.363 to the Education Code, the TEA must publish campus performance in community and student engagement, as well as performance ratings, distinction designations, and financial accountability ratings on its website by October 1 of each year.

## College Admission:

- Automatic Admission:
  - Section 64 amends Section 51.803 of the Education Code and requires that each general academic teaching institution grant admission to an applicant as an undergraduate student if the applicant graduated in the top 10 percent of his or her graduating class in one of the two school years preceding the academic year for which the applicant is seeking to enroll and the student successfully completed, at a public high school, the curriculum requirements for distinguished level of achievement under the foundation program, or for those high schools to which Section 28.025 of the Education Code does not apply, the equivalent to a distinguished level of achievement. The Commissioner and THECB must adopt rules together to establish the eligibility requirements for admission under this section so that students participating in the recommended or advanced high school programs are not affected by participation in such programs.
  - Section 18 amends Section 28.026 of the Education Code and requires the governing body of open-enrollment charter schools that provide high school education to post in each high school provided by the charter school a sign in each counselor's office, each principal's office, and in each administrative building the substance of Section 51.083 regarding automatic college admission and stating the curriculum requirements for financial aid authorized under Title 3. In addition, each open enrollment charter school must provide a detailed explanation of Section 51.083 and financial aid under Title 3 to each high school counselor and student. In providing notice, a school district or open-enrollment charter school must use a form promulgated by the Commissioner.
- Other Admission:
  - Section 65 amends Section 51.805 of the Education Code whereby a student who does not qualify for automatic admission may apply to any general academic teaching institution if the student successfully completed: the ACT's College Readiness Benchmarks on the ACT or earned a score of at least 1,500 out of 2,400 on the SAT, the curriculum requirements under the foundation program, or for those high schools to which Section 28.025 of the Education Code does not apply, the equivalent to the foundation program. The Commissioner and THECB must adopt rules together to establish the eligibility requirements for admission under this section so that admission requirements for students participating in the minimum, recommended or advanced high school programs are not more stringent than the admission requirements for students participating in the foundation program.

**Impact:** The provisions addressed substantively impact the curriculum offered at UT institution charter schools as well as the assessments that are administered to

students. In addition, many accountability provisions have been amended. Certain changes require action such as notice to students relating to automatic admission and additional reporting to PEIMS. In addition, UT System academic institutions should be aware of the changes to college admission due to the implementation of the foundation program.

**Effective:** June 10, 2013

Neera Chatterjee

[HB 1284](#) by Johnson, et al. and Huffman

Relating to the offense of making or causing a false alarm or report involving a public or private institution of higher education.

Under current law, a person commits an offense under Section 42.06, Texas Penal Code, if he knowingly initiates, communicates or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily: (1) cause action by an official or volunteer agency organized to deal with emergencies; (2) place a person in fear of imminent serious bodily injury; or (3) prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance. The offense under Section 42.06, Texas Penal Code, of making such a false alarm or report involving a public or private institution of higher education is a state jail felony. An individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail for any term of not more than two years or less than 180 days and, in addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed \$10,000.

This bill requires institutions of higher education to:

- notify all incoming students, as soon as practicable, of the penalty for the offense under Section 42.06, Texas Penal Code, of making a false alarm or report involving a public or private institution of higher education; and
- notify all enrolled students not later than October 1, 2013 of the penalty for the offense under Section 42.06, Texas Penal Code, of making a false alarm or report involving a public or private institution of higher education.

**Impact:** Each UT component institution must make the required notices in a timely manner. This requirement may necessitate changes to the institutions' catalogs.

**Effective:** June 14, 2013

Jack C. O'Donnell

[HB 1296](#) by Alvarado, et al. and Taylor

Relating to information regarding postsecondary education and career opportunities and workforce needs in this state.

HB 1296 requires the Texas Education Agency (TEA) to prepare information comparing institutions of higher education and post the information on the agency's Internet website. Information prepared by TEA must be provided to any public school student who requests it. The information prepared by TEA must include the following:

- identify postsecondary education and career opportunities, including information that states the benefits of four-year and two-year higher education programs, postsecondary technical education, skilled workforce careers, and career education programs;
- compare each institution of higher education with other institutions regarding the relative cost of tuition; the retention rate of students; the graduation rate of students; the average student debt; the loan repayment rate of students; and the employment rate of students;
- identify the state's future workforce needs, as projected by the Texas Workforce Commission (TWC); and
- include annual wage information for the top 10 highest demand jobs in this state, as identified by TWC.

HB 1296 also requires that the TEA, in collaboration with the Texas Higher Education Coordinating Board (Coordinating Board) and TWC to obtain the foregoing information. TEA will also be required to incorporate the use of existing materials and develop new materials to be provided to counselors, students, and parents regarding institutions of higher education.

HB 1296 requires each institution of higher education to include on its Internet website, in a prominent location that is not more than three hyperlinks from the website's home page, a link to the information posted to the TEA's Internet website.

HB 1296 requires the Coordinating Board, in conjunction with the TWC (and in consultation with any other state agencies as requested by the Coordinating Board), to collect relevant information and make annual projections for the next five years concerning workforce needs of the state and education attainment and training of the persons projected to enter the workforce. Based on these projections, the Coordinating Board is required to identify the types and levels of education, training, and skills that are needed to meet the state's future workforce needs and make recommendations concerning the expansion of existing programs or the development of new programs at public and private postsecondary educational institutions in this state as necessary to meet these projected workforce needs. In turn, HB 1296 provides that a postsecondary

educational institution may use these recommendations in planning for degree programs, coursework offerings, and training programs.

HB 1296 also requires, not later than February 1, 2015, the Coordinating Board prepare and submit electronically to each standing legislative committee with primary jurisdiction over higher education or workforce development, each public and private postsecondary educational institution in this state, and the TEA a report of the information collected and analyzed under this section, including recommendations of the Coordinating Board for programming at postsecondary educational institutions. The Coordinating Board may provide subsequent updates as it considers necessary.

**Impact:** Each UT System institution will be required to include on its Internet website, in a prominent location that is not more than three hyperlinks from the website's home page, a link to the information posted to the TEA's Internet website regarding postsecondary education and career opportunities and workforce needs in this state. Each UT System institution should also be prepared to respond to the TEA's requests for this information. Regarding the Coordinating Board's requirement to make five year projections concerning workforce needs of the state and education attainment and training of the persons projected to enter the workforce, each UT System institution should be prepared to provide the Coordinating Board with relevant information, if requested. Also, depending upon the Coordinating Board findings and recommendations in its five year projections, UT System institutions should be prepared to review such projections and make decisions in planning for degree programs, coursework offerings, and training programs.

**Effective:** June 14, 2013

Melissa Garcia

[HB 1843](#) by Branch and Seliger

Relating to limitations on the automatic admission of undergraduate students to general academic teaching institutions.

Currently, UT Austin's authority to cap its automatic admission of the top 10% of high school graduates to 75% of its incoming freshman class is set to end after the 2015-2016 academic year. The bill moves that deadline back two years and extends UT Austin's authority to cap automatic admissions until the end of the 2017-2018 academic year.

Additionally, HB 1843 eliminates obsolete provisions applicable to student enrollment prior to the 2009-2010 academic year.

**Impact:** The bill allows UT Austin to continue its authority to limit the number of automatic admission under the top 10% statute. Therefore, there is no impact on UT Austin's current operations.

**Effective:** June 14, 2013

Esther L. Hajdar

[HB 2549](#) by Patrick, Diane and Paxton

Relating to the periodic review and revision of college and career readiness standards in public education.

The bill imposes a new obligation on “vertical teams.” Vertical teams are committees composed of public school educators and institution of higher education faculty appointed by the commissioners of education and higher education. The teams are responsible for recommending and supporting high school curriculum and strategies to ensure high school students are academically prepared for entry into higher education. The bill requires the vertical teams to also periodically review and revise the college readiness standards and expectations and recommend revised standards for approval by the Commissioner of Education and the Coordinating Board.

The Commissioner of Education and the Coordinating Board by rule must establish a schedule for the periodic review.

**Impact:** The bill does not impact UT institution operations. UT institutions should monitor and participate in, to the extent possible, the activities of the committee.

**Effective:** June 14, 2013

Esther L. Hajdar

[HB 2550](#) by Patrick and Zaffirini

Relating to the consolidation of the Higher Education Enrollment Assistance Program and the Higher Education Assistance Plan and the transfer of certain enrollment assistance duties to institutions of higher education and to measures to enhance medical education.

HB 2550 requires the institution of higher education closest in geographic proximity to a public high school that is substantially below the state average in the number of their graduates who enroll in higher education to enter into an agreement with that high school to develop a plan to increase the number of students from that high school enrolling in higher education. This bill specifies the requirements of the plan which include providing enrollment information and assistance, targeting enrollment efforts to increase the number of Hispanic students and African American male students, and engaging with school districts to provide access to rigorous, high-quality dual credit opportunities. The plan and the results of the plan must be included in the institution’s annual report to the Texas Higher Education Coordinating Board (THECB). The THECB is authorized to adopt rules to implement the section.

The bill also requires that the Texas Higher Education Coordinating Board (THECB) administer the Resident Physician Expansion Grant Program. The grant program includes grants to encourage the creation of new graduate medical education programs, additional first year residency positions, and innovative programs designed to increase the number of primary care physicians in the state.

**Impact:** HB 2550 impacts UT System institutions that are closest in geographic proximity to a public high school that is substantially below the state average in the number of their graduates who enroll in higher education. These institutions are required to provide to prospective students from these high schools information related to enrollment in an institution of higher education, including one that is private or independent. These institutions are also required to assist prospective students in completing admissions and financial aid applications, and fulfilling testing requirements. This bill impacts these institutions of higher education to the extent that they may need to increase the number of staff in order to provide the required information and assistance to students. The bill also impacts these UT System institutions because it requires additional information on reports to the coordinating board. The bill also impacts UT System institution graduate medical education programs because it provides the opportunity for new grant programs. UT System institutions with such programs should review new grant opportunities and application requirements as set forth in THECB to determine whether to pursue available grants.

**Effective:** September 1, 2013

Priscilla Lozano

**SB 62** by Nelson and Laubenberg

Relating to the vaccination against bacterial meningitis of entering students at public and private or independent institutions of higher education.

SB 62 amends Education Code 51.9192, which currently requires all "entering students" at an institution of higher education below the age of thirty to provide proof that they have received a vaccination against bacterial meningitis within the last five years prior, or that they have met the requirements for claiming an exemption the requirement, before they can enroll in the institution.

The bill amends the statute to apply only to students under the age of twenty two.

It also adds the requirement that all students must use an affidavit from issued by the Texas Department of State Health Services (DSHS) to claim an exemption from the vaccination requirement based on a conscientious or religious objection and that the affidavit must be submitted within 90 days of the date that it is notarized.

Currently, the statute does not dictate the affidavit form that students must use to claim such an exemption. However, the Texas Higher Education Coordinating Board (THECB), which has rulemaking authority with respect to the statute, has adopted a rule that requires entering students who plan to reside in on-campus housing or are under the

age of 18 to use the affidavit form and process promulgated by DSHS, while students who do not intend to reside in on-campus housing to use a different affidavit and process.

The bill also amends Section 161.0041 of the Health & Safety Code to clarify that any student claiming a conscientious or religious exemption from the vaccination requirement set forth in Education Code 51.9192 must use the DSHS-issued affidavit form.

Finally, the bill allows public junior colleges to comply with the vaccination requirement by using an internet-based compliance tool. This provision does not apply to System institutions.

**Impact:** The change to the age requirement will reduce the number of students that UT System institutions will be required to track. The change to a single affidavit requirement and process for all students claiming a conscientious or religious exemption will reduce the administrative burden to the institutions, which are currently required to determine each affected student's housing plans and ensure that each student uses the correct affidavit form and process. The UT System Office of General Counsel in consultation with the Office of Academic Affairs, has amended the model policy and FAQs it published previously to assist UT System institutions with their compliance obligations.

**Effective:** October 1, 2013

Barbara Holthaus

[\*\*SB 497\*\*](#) by Seliger, et al. and Branch

Relating to the number of semester credit hours required to earn an associate degree at public institutions of higher education.

SB 497 prohibits an institution of higher education from requiring more semester credit hours for the award of an associate degree than the minimum number of semester credit hours required by the Southern Association of Colleges and Schools for the completion of the degree unless the institution determines there is a compelling academic reason. The Texas Higher Education Coordinating Board may review an institution's associate degree programs to ensure compliance.

**Impact:** SB 497 does not directly impact UT System institutions because they do not award associate degrees. Further, the bill does not apply to an associate degree awarded to a student enrolled in the institution before 2015 fall semester, thus, to the extent that the bill would impact UTB/TSC, the partnership will have ended by the time the bill takes effect. However, the bill indirectly impacts UT System institution to the extent that students who enroll at a UT System institution continue their education may have fewer hours eligible for transfer. UT System institution academic affairs officials should monitor Texas Higher Education Coordinating Board information regarding those institutions that are exceeding the semester credit hours to determine the potential impact for class planning purposes.

**Effective:** June 14, 2013

Priscilla Lozano

[SB 498](#) by Seliger, et al. and Guillen, et al.

Relating to applying credit earned by a student at a general academic teaching institution to an associate's degree at a lower-division institution of higher education previously attended by the student.

SB 498 amends Education Code, Section 61.833, by lowering from 90 to 60 the minimum number of cumulative credit hours a student must earn for the lower-division institution to consider whether the associate degree has been earned.

**Impact:** While of minimal direct impact, students transferring to a UT academic institution with an associate degree containing fewer credit hours will necessarily have fewer hours which can be transferred to the UT institution.

**Effective:** June 14, 2013

Dan Sharphorn

### **Tuition and Fees**

[HB 29](#) by Branch, et al. and Seliger

Relating to requiring certain general academic teaching institutions to offer a fixed tuition price plan to undergraduate students.

Under provisions of the bill, general academic teaching institutions, other than public state colleges, will be required to offer entering undergraduate students, including transfer students, the opportunity to participate in a fixed tuition price plan under which the institution agrees not to increase tuition charges per semester credit hour for a participating student for at least 12 consecutive semesters that occur after the date of the student's initial enrollment at any public or private institution in those semesters, and subject to any restrictions or qualifications adopted by the governing board.

**Impact:** HB 29 directly affects the Board of Regents and UT academic institutions by mandating that the Board offer each entering undergraduate student the option to pay a fixed tuition rate for the student's first four years, and limiting the amount of tuition that can be charged after that period. UT academic institutions must be aware that, generally speaking, any future undergraduate tuition increases will apply only to entering freshmen, students that have not chosen a fixed tuition price plan, and transfer students. UT academic institutions must also notify entering undergraduate and transfer students of the fixed payment plan option.

**Effective:** June 14, 2013

Tamra J. English

[HB 2103](#) by Villarreal, et al. and Seliger

Relating to education research centers and the sharing of educational data between state agencies; redesignating certain fees as charges.

HB 2103 makes several changes to the oversight and operations of Education Research Centers (ERCs). The Coordinating Board is required to establish not more than three ECRs to conduct studies and evaluations using the data described in Section 1.005 of the Education Code. The Coordinating Board is required to solicit requests for proposals from appropriate institutions to establish each ERC and would evaluate those proposals based on criteria adopted by the coordinating board.

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

HB 2103 removes the commissioner of education from the direct oversight of ERCs and would remove the commissioner's power to require ERCs to perform particular studies. Any cooperating agency may request that an ERC conduct a study or evaluation if the agency provided sufficient funds to finance the study or evaluation.

**ERC use of shared student data.** HB 2103 provides that in conducting studies, an ERC could use student data and educator data, including FERPA protected confidential data, that the center collected from any of the following: Texas Education Agency, the Coordinating Board, Texas Workforce Commission, or any other agency or institution of higher education, school district, a provider of services to these institutions, or any entity explicitly named in an approved ERC research project.

ERCs are required to comply with applicable state and federal law on confidentiality of student information. ERCs are also required to provide researchers access to student data only through secure methods and would require researchers to sign confidentiality agreements. Finally, ERCs must conduct regular security audits and report the results to the Coordinating Board and an ERC research advisory board established by HB 2103 to review ERC studies or evaluation proposals.

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

HB 2103 also removes certain notification requirements to the governor, the Legislative Budget Board, and the educational institution hosting the ERC where the particular study was being undertaken.

**Student data storage.** HB 2103 requires that the Coordinating Board store the data shared with it by cooperating agencies in a repository called the “P-20/Workforce Data Repository.” The board must also store other data in the repository, including data from college admission tests and the National Student Clearinghouse. It would use appropriate data matching and confidentiality procedures as approved by the cooperating agencies.

**Data sharing agreements with other states.** HB 2013 also provides that the Coordinating Board may enter into data sharing agreements with local agencies or organizations that provide educational services or with other relevant organizations of another state. The Coordinating Board would give priority to those states that sent the most college students to Texas or that received the most college students from here. These agreements would be reviewed by the U.S. Department of Education.

**ERC research advisory board.** HB 2103 also establishes an ERC research advisory board to review ERC studies or evaluation proposals to ensure appropriate data use. Each study or evaluation conducted by an ERC would have to be approved in advance by majority vote of the advisory board. ERCs could submit proposals from another educational institution, a graduate student, a P-16 Council, or another researcher proposing research to benefit education in Texas. In determining whether to approve a proposed study, the advisory board would have to:

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

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

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

The board would meet at least quarterly. The advisory board would not be a governmental body and thus not subject to the Open Meetings Act or Open Records Act.

**Other provisions.** HB 2103 changes the funding method for ERCs from “fees” to “charges” that would be imposed for the use of a center’s research, resources, or facilities.

HB 2103 also defines “cooperating agencies” to mean TEA, the coordinating board, and TWC.

**Impact:** To the extent UT System academic institutions have Education Research Centers, each should be aware of the changes to the oversight and operations of Education Research Centers.

**Effective:** June 14, 2013

Melissa V. Garcia

**SB 1159** by Van de Putte and Patrick, Diane

Relating to higher education for certain military personnel and their dependents.

SB 1159 requires graduate and professional programs to grant re-admission or re-enrollment to any veteran who was initially offered admission but could not enroll or had to withdraw due to deployment as a member of the US armed forces serving on active duty, for the purpose of engaging in a combative military operation outside the United States. Additionally, the program must grant credit for any course work previously completed under the program and accept standardized test scores previously submitted for admission to the program. These requirements apply regardless of the time since the person was initially offered admission or withdrew.

SB 1159 also directs the Legislative Budget Board (LBB), with support from the Veterans Commission and the Coordinating Board, to study and evaluate the tuition and fee Hazelwood exemption (Section 54.341, Texas Education Code). Among other areas, the study must assess demographics of the recipients, degree attempted and awarded, credit hours, GPA, graduation rates, use of federal benefits, and costs. Institutions of higher education must cooperate with the LBB in providing requested data. A report of the study with recommendations must be submitted to key state officials by December 1, 2014.

**Impact:** Graduate and professional programs should be made aware of this new requirement of automatic re-admission, course credit and test scores of certain deployed military personnel. Additionally, programs may need to assess whether additional resources will be needed to assist students upon re-admissions to be academically successful.

**Effective:** June 14, 2013

Esther L. Hajdar

**SB 1210** by Zaffirini and Branch

Relating to conditions on the receipt of tuition and fee exemptions and waivers at public institutions of higher education.

SB 1210 sets forth standards that a student must meet in order to continue to receive a tuition or fee waiver or exemption in subsequent semesters. The graduate or undergraduate student must maintain the institution's grade point average requirement for making satisfactory academic progress toward a degree or certificate, in accordance with the institution's policy regarding eligibility for financial aid. Undergraduate students, to remain eligible, also may not have an excessive number of semester credit hours under Section 54.014 (30 sch or more than degree plan), unless the institution determines there is good cause. In calculating excess credit hours, the following are not included: hours earned exclusively by examination; dual credit hours; and developmental coursework hours that an institution required the person to take under Success Initiative.

If a student fails to meet the requirements for continued eligibility, he or she is not eligible for the exemption for the following semester but can become re-eligible if the student meets the eligibility criteria above again.

Institutions must adopt a policy to allow a student who fails to maintain the required grade point average to continue receiving the exemption or waiver in any semester or term on a showing of hardship or other good cause, such as severe illness, care for another, or military service. Institutions must maintain documentation of any good cause exception granted.

If other statutes provide standards for continued receipt of an exemption, the stricter standard applies.

Additionally, the requirements in this bill do not apply to tuition or fee exemptions or waivers given to:

- High school students enrolled in dual credit courses;
- Spouses or children of veterans who were killed in action, who died while in service, who are missing in action, or whose death is documented to be directly caused by illness or injury connected with the veteran's service (paras. (A)-(D) of subsections 54.341(a-2) and (b));
- Texas residents who were prisoners of war (Sec 54.342);
- Certain students who were under the Conservatorship of the Department of Family and Protective Services (Sec. 54.366); and

- Nonresident students who are eligible to pay Texas resident rates under state law.

Finally, SB 1210 clarifies that any tuition or fee exemption or waiver only applies to formula-funded courses.

These provisions apply to a person's eligibility for an exemption or waiver from the payment of all or part of tuition or other fees beginning with tuition and fees charged for the 2014 fall semester.

**Impact:** SB 1210 encourages students to maintain satisfactory academic performance and encourages timely completion of degrees, in order to continue receiving tuition and fees exemptions and waivers. Financial aid offices should be made aware of these new requirements and adopt procedures to ensure compliance with the bill's requirements. Additionally, institutions must adopt a policy and procedures to address whether hardship or good cause exists, if a student fails to meet eligibility standards for continued receipt of an exemption or waiver.

**Effective:** June 14, 2013

Esther L. Hajdar

### **Financial Aid and Savings Programs**

**HB 2550** by Patrick and Zaffirini

Relating to the consolidation of the Higher Education Enrollment Assistance Program and the Higher Education Assistance Plan and the transfer of certain enrollment assistance duties to institutions of higher education and to measures to enhance medical education.

HB 2550 requires the institution of higher education closest in geographic proximity to a public high school that is substantially below the state average in the number of their graduates who enroll in higher education to enter into an agreement with that high school to develop a plan to increase the number of students from that high school enrolling in higher education. This bill specifies the requirements of the plan which include providing enrollment information and assistance, targeting enrollment efforts to increase the number of Hispanic students and African American male students, and engaging with school districts to provide access to rigorous, high-quality dual credit opportunities. The plan and the results of the plan must be included in the institution's annual report to the Texas Higher Education Coordinating Board (THECB). The THECB is authorized to adopt rules to implement the section.

The bill also requires that the Texas Higher Education Coordinating Board (THECB) administer the Resident Physician Expansion Grant Program. The grant program includes grants to encourage the creation of new graduate medical education programs,

additional first year residency positions, and innovative programs designed to increase the number of primary care physicians in the state.

**Impact:** HB 2550 impacts UT System institutions that are closest in geographic proximity to a public high school that is substantially below the state average in the number of their graduates who enroll in higher education. These institutions are required to provide to prospective students from these high schools information related to enrollment in an institution of higher education, including one that is private or independent. These institutions are also required to assist prospective students in completing admissions and financial aid applications, and fulfilling testing requirements. This bill impacts these institutions of higher education to the extent that they may need to increase the number of staff in order to provide the required information and assistance to students. The bill also impacts these UT System institutions because it requires additional information on reports to the coordinating board. The bill also impacts UT System institution graduate medical education programs because it provides the opportunity for new grant programs. UT System institutions with such programs should review new grant opportunities and application requirements as set forth in THECB to determine whether to pursue available grants.

**Effective:** September 1, 2013

Priscilla Lozano

**SB 215** by Birdwell, et al. and Anchia

Relating to the continuation and functions of the Texas Higher Education Coordinating Board, including related changes to the status and functions of the Texas Guaranteed Student Loan Corporation.

SB 215 makes numerous changes to the Texas Higher Education Coordinating Board (THECB) functions and programs that include the following relevant to university systems and institutions of higher education:

- The bill redefines the Board's powers and duties to reflect the major functions of a higher education coordinating entity and provides that the THECB has only the powers provided by law, reserving the governance of institutions to their governing boards. The bill adds the requirement for the THECB to develop a long-range master plan that will require the board to re-evaluate the role and mission of each general academic teaching institution. The role of the THECB in establishing best practices and pilot programs is redefined and provides limitations when establishing such programs. The bill requires the THECB to administer a pilot program at selected institutions no later than January 1, 2014 to ensure that students are informed consumers with regard to student financial aid.

- SB 215 requires the Board to establish a policy on an agency-wide risk-based compliance monitoring function for ensuring: (1) that funds allocated by the THECB to the institution are distributed in accordance with law and rule; and (2) that data reported by institutions to the THECB and used for funding or policymaking decisions is correct. Factors in developing the policy and provisions on conducting the review (ex: partnering with institution’s audit department; announced or un-announced visits) are included in the bill, as are notification procedures when the THECB determines through the compliance monitoring process that funds were misused or misallocated by an institution, or if there were errors in formula funding. Any final determination is reported to the institution’s governing board and in determinations of formula funding errors, revisions to the appropriated amount would be calculated and reported to the governor, LBB, and comptroller.
- SB 215 requires the THECB to engage in negotiated rulemaking with university systems and institutions to identify unnecessary requests for information to eliminate them or ways to streamline the requests. The THECB is also required to engage affected institutions in negotiated rulemaking processes when adopting a policy, procedure, or rule relating to admissions policies, the allocation or distribution of funds (including financial aid or other trusted programs), certain data requests, its new compliance monitoring function, and standards to guide the board’s review of new construction and the repair and rehabilitation of buildings and facilities. The THECB is also to establish methods for obtaining input from stakeholders and the general public when developing the long range master plan, implement policies to provide opportunities for public comment at each board meeting, and adopt policies for forming advisory committees.
- The bill amends the process for THECB approval of new degrees or certificate programs and provides new criteria used for the program review. The bill includes new provisions pertaining to consolidation or elimination of degree or certificate programs and allowing off-campus courses for credit within the state or distance learning courses.
- The bill changes the THECB responsibility in reviewing and approving new construction and repair and rehabilitation projects, limiting their duties and requiring the THECB to adopt standards to guide their review.
- SB 215 amends various provisions within the TEXAS Grant program, limiting eligibility to those students enrolled in a baccalaureate degree program and removing 2-year colleges from eligibility for TEXAS grant funding. The bill also requires the THECB to allocate the TEXAS grant funding “proportionally” among the remaining eligible institutions.
- SB 215 amends provisions within the Texas B-On-Time program. The changes limit the program to students earning baccalaureate degrees and limits eligibility to general academic teaching institutions except for state colleges, medical and dental units offering baccalaureate degrees, or private or independent institutions

of higher education that offer baccalaureate degree programs. The bill also requires that the THECB, in collaboration with eligible entities, adopt and implement measures to improve participation in the program and improve the rate of student satisfaction of the program terms. Institutions with a loan forgiveness rate of less than 50% statewide or whose default exceeds the statewide average will be required to give training to all loan recipients enrolled at their institution.

- As to student loans, the bill converts the Texas Guaranteed Student Loan Corporation from a public nonprofit corporation to a nonprofit corporation under Chapter 22 of the Business Organization Code. The bill also changes the venue to Travis County in default suits for student loans authorized by Education Code Chapter 52.
- The bill amends various provisions within the Norman Hackerman Advanced Research Program, including administration of the program by the THECB. The Research University Development Fund provisions have also been modified: the bill changes the name of the fund to the Texas Competitive Knowledge Fund and changes the eligibility factors and funding.
- This bill requires that additional information and certification be provided by a governing board in its annual report to the THECB of each institution's list of courses. The bill also requires institutions to annually report to the governing board of the institution information regarding the condition of the buildings and facilities of the institution, including information concerning deferred maintenance with respect to those buildings and facilities as defined by the THECB.

**Impact:** The bill directly impacts UT System and its institutions since it makes significant changes in the authority of the THECB, resulting in numerous modifications to programs administered by the board. Of greatest importance, the THECB will be required to adopt a number of rules affecting the institutions in which the UT System and its institutions, through rulemaking or statutory directive, will be directly involved, the bill requires that a new compliance monitoring program be established through rulemaking and requires further information and certification by the Board of Regents in its annual list of courses and an annual report to the Board of Regents regarding the condition of its buildings and facilities.

**Effective:** September 1, 2013

Helen Bright

**SB 620** by Van de Putte and Allen

Relating to student loan repayment assistance for speech-language pathologists or audiologists employed by a public school or as faculty members of certain programs at public institutions of higher education.

SB 620 creates a student loan repayment program for qualified speech language pathologists or audiologists, as licensed under Chapter 401 of the Texas Occupations Code. To be eligible, a speech language pathologist or audiologist must:

- at the time of her application, be currently employed as a speech language pathologist or audiologist and have been employed in that capacity for at least one year by a public school district; or
- at the time of her application, be currently employed as a faculty member of a communicative disorders program at a public, private, or independent institution of higher education, and have been employed in that capacity for at least one year.

Repayment assistance may be provided pro-rata for part-time practitioners. The student loan eligible for repayment is to be defined by the Texas Higher Coordinating Board (“Board”), which is expressly granted rule-making authority and shall administer the program, which includes providing the repayment assistance, appointing advisory committees, soliciting and accepting gifts, grants, and donations to fund the program, and distributing program information to the appropriate institutions and agencies.

**Impact:** UT institutions will receive the Board's program rules and information to distribute to its financial aid/accounting offices, eligible academic program offices, students, etc. This program may result in UT institutions being reimbursed for loans on which they are lenders, and their financial aid/accounting staff would have to apply the funds correctly to principal and accrued interest, as provided by the law. UT institutions will not fund this program, e.g. there is no tuition set-aside.

**Effective:** September 1, 2013

Hannah D. Huckaby

**SB 680** by West and Patrick

Relating to a pilot program to improve student loan default rates and financial aid literacy among postsecondary students.

SB 680 creates a pilot program aimed at improving student loan default rates and financial aid literacy among postsecondary students. The Higher Education Coordinating Board (“HECB”) will select institutions for the pilot program, requiring them to ensure students become informed consumers of financial aid. Each year, the HECB will report on the success of the program.

**Impact:** If selected by the HECB, a UT System institution would have to instruct students on the consequences of borrowing, strategies for avoiding default, etc.

**Effective:** June 14, 2013

Dan Sharphorn

[SB 1720](#) by Patrick, et al and Clardy

Relating to the Math and Science Scholars Loan Repayment Program for teachers who agree to teach mathematics or science in certain school districts in this state.

SB 1720 creates the Math and Science Scholars Loan Repayment Program (“Program”).

SB 1720 authorizes the Texas Higher Education Coordinating Board to provide assistance in the repayment of eligible student loans for eligible persons who agree to teach mathematics or science for a specific period in school districts that receive federal funding under Title, I, Elementary and Secondary Education Act of 1965.

SB 1720 sets forth eligibility requirements for persons to receive loan repayment assistance under the Program. Specifically, a person must:

- apply annually for the loan repayment assistance in the manner prescribed by the Coordinating Board;
- be a United States citizen;
- have completed an undergraduate or graduate program in mathematics or science;
- have a cumulative grade point average of at least 3.5 on a four-point scale or the equivalent;
- be certified under Subchapter B, Chapter 21 of the Education Code, to teach mathematics or science in a public school in this state or be enrolled in an educator preparation program to obtain that certification that is accredited by the State Board for Educator Certification and is provided by an institution of higher education or by a private or independent institution of higher education in this state;
- have been employed for at least one year as a teacher teaching mathematics or science at a public school located in a school district that receives funding under Title I, Elementary and Secondary Education Act of 1965;
- not be in default on any other education loan;

- not receive any other state or federal loan repayment assistance, including a Teacher Education Assistance for College and Higher Education (TEACH) Grant or teacher loan forgiveness;
- enter into an agreement with the Coordinating Board, as set forth in Section 61.9831(c) of the Education Code; and
- comply with any other requirement adopted by the Coordinating Board.

SB 1720 states that the initial application for the Program must include a transcript of the applicant's postsecondary coursework.

In order to receive loan assistance under the Program, SB 1720 requires that a person enter into an agreement with the Coordinating Board requiring the following provisions:

- the person will accept an offer of full-time employment to teach mathematics or science, as applicable based on the person's certification, in a public school located in a school district that receives funding under Title I, Elementary and Secondary Education Act of 1965;
- the person will complete four consecutive years of employment as a full-time classroom teacher in a school that receives federal funding under Title I, Elementary and Secondary Education Act of 1965 whose primary duty is to teach mathematics or science, as applicable, based on the person's certification;
- beginning with the school year immediately following the last of the four consecutive school years, the person will complete four additional consecutive school years teaching in any public school in this state; and
- the person acknowledges the conditional nature of the loan repayment assistance.

In order to satisfy the teaching obligation of this agreement, SB 1720 requires the person to teach mathematics or science courses for not less than an average of four hours each school day.

When making awards to an eligible person, SB 1720 requires the Coordinating Board to determine the annual amount of loan assistance payments in any, taking into consideration the amount of available funding and other relevant considerations. SB 1720 also requires the Coordinating Board to reduce the amount of a single assistance payment or refrain from making a loan assistance payment to an eligible person as necessary to avoid making total payments to an eligible person in an amount greater than the total amount of principal and interest due on the person's eligible loans.

SB 1720 provides exceptions to the consecutive years of employment requirement under the Program. Specifically, the requirement is excused if the break in employment is a result of the person's: (1) full-time enrollment in a course of study related to the field of teaching that is approved by the State Board for Educator Certification and provided by

an institution of higher education or by a private or independent institution of higher education in this state; (2) service on active duty as a member of the armed forces of the United States, including as a member of a reserve or National Guard unit called for active duty; (3) temporary total disability for a period of not more than 36 months as established by the affidavit of a qualified physician; (4) inability to secure the required employment for a period not to exceed 12 months, because of care required by a disabled spouse or child; (5) inability, despite reasonable efforts, to secure, for a single period not to exceed 12 months, of required employment; or (6) satisfaction of the provisions of any other exception adopted by the Coordinating Board for purposes of this bill.

SB 1720 provides that eligible loans for the loan the repayment program includes a loan that is for education at a public or private institution of higher education; and is received by an eligible person through an eligible lender. A loan that is in default at the time of the application by a person is not eligible for the Program.

SB 1720 also creates the Mathematics and Science Teacher Investment Fund (“Fund”). The Fund is a dedicated account in the general revenue fund and consists of gifts, grants, and other donations received for the fund; and interest and other earnings from the investment of the fund. The Fund may be used only to provide repayment assistance for the repayment of eligible loans, including related administrative costs. The Fund is exempt from the application of Section 403.095, Government Code (relating to use of dedicated revenue) and 404.071, Government Code (relating to disposition of interest on investment). SB 1720 also allows the Coordinating Board to accept grants, gifts, or donations from any public or private entity for the purposes of the Program. All money received for the Program must be deposited in the Fund. SB 1720 also mandates that the legislature may not appropriate general revenue to the Fund.

Pursuant to SB 1720, the amount of loan repayment assistance paid by the Coordinating Board may not exceed the total amount of money available in the Fund and any other money that the Coordinating Board is legally authorized to use. Not more than 4,000 eligible persons may be provided loan repayment assistance in any school year—which will expire January 1, 2020. Notwithstanding the 4,000 person eligibility limit, not more than the following number eligible persons may be provided loan repayment assistance in in the specified school year: (1) in the 2016-2017 school year, not more than 1,000 eligible persons; (2) in the 2017-2018 school year, not more than 2,000 eligible persons; and (3) in the 2018-2019 school year, not more than 3,000 eligible persons.

SB 1720 also provides that if in any year the amount of money available for loan repayment assistance is insufficient to provide loan repayment assistance to each eligible applicant or if there are more eligible applicants than the number authorized by this section, the Coordinating Board must establish a criteria to determine which eligible applicants will be provided repayment assistance as the Coordinating Board determines appropriate. SB 1720 provides funding limitations stating that only available money in the Fund may be used for loan repayment assistance.

SB 1720 also allows for continued loan repayment assistance based upon continuing employment. Specifically, an eligible person may continue to receive loan repayment

assistance if the person continues to teach in a public school after the first four years required for eligibility under the Program. However, if an eligible person transfers to a public school located in a school district that does not receive funding under Title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. Section 6301 et seq.), after the first four years required for eligibility, the person may not receive more than 75 percent of the maximum annual amount of the loan repayment assistance as determined by the board. Finally, a person who does not satisfy the applicable conditions of the Program subchapter after establishing eligibility for an award of loan repayment assistance is no longer eligible to apply for such assistance.

SB 1720 requires that the Coordinating Board to adopt rules to administer and implement the loan repayment program, including a rule providing for: the manner in which a person may apply for loan repayment assistance; and a method of awarding assistance that (i) gives first priority to applicants who are renewing their applications for loan repayment assistance provided under this subchapter; and (ii) awards any remaining available assistance according to a cumulative ranking system developed by the Coordinating Board based on the number of mathematics and science courses completed by the applicant and the grade received by the applicant for each of those courses.

SB 1720 requires the Coordinating Board to adopt, by rule, a common application form for use by new applicants and renewal applicants. This form must include a section in which the school district for which the applicant has taught for at least one year verifies the applicant's year of employment.

Finally, SB 1720 requires the Coordinating Board to begin providing loan repayment assistance for eligible persons teaching in the 2016-2017 school year.

**Impact:** Although SB 1720 has no direct impact on UT System institutions, System academic institutions should be aware of this legislation so that each may provide its education students with information regarding the Math and Science Scholars Loan Repayment Program.

**Effective:** June 14, 2013

Melissa V. Garcia

### **Programs, Courses, and Credits**

[\*\*HB 1752\*\*](#) by Patrick, et al. and Seliger

Relating to creating the Texas Teacher Residency Program.

HB 1752 creates the Texas Teacher Residency Program at a public institution of higher education, which would partner with a school district or open-enrollment charter school to provide employment for teaching residents who were pursuing a master's degree and lead to certification for participating reaching residents who are not already certified

teachers. The commissioner of higher education would adopt rules as necessary to implement and administer the residency program.

HB 1752 sets forth the following eligibility requirements for the Texas Teacher Residency Program:

- have received an initial teaching certificate not more than two years before applying for a residency slot and have less than 18 months of full-time equivalency teaching experience as a certified teacher;
- have a bachelor's degree and be a mid-career professional from outside of education with strong content knowledge or a record of achievement; or
- have a bachelor's degree and be a noncertified educator, such as a substitute teacher or teaching assistant.

HB 1752 also establishes the following guidelines for selecting participants in the Texas Teacher Residency Program:

- a demonstration of comprehensive subject area knowledge or a record of accomplishment in the field or subject area to be taught;
- strong verbal and written communication skills; and
- attributes linked to effective teaching, as determined by interviews or performance assessments.

Pursuant to HB 1752, the commissioner of higher education must establish the Texas Teacher Residency Program by March 1, 2014, at a public institution of higher education through a competitive selection process. The institution would have developed a commitment to investing in teacher education. The institution would partner with a school district or open-enrollment charter school that would provide employment to the program's participants.

HB 1752 requires that the residency program be designed to award teaching residents with a master's degree and lead to teacher certification for participants not already certified.

HB 1752 also requires that the higher education institution selected for the residency program reward faculty instructing in the teacher residence program, identify faculty who could prepare teachers to impact student achievement in high-need schools, provide the faculty adequate time to teach courses and prepare teachers in the program and value their efforts with rewards linked to the university tenure process, and develop and implement a program that acknowledges and elevates the significance and professional nature of teaching at the primary and secondary levels.

HB 1752 provides that the components of the residency program include the following:

- competitive admission requirements with multiple criteria;
- integration of pedagogy and classroom practice;
- rigorous master’s level course work required of participants while they served in a guided apprenticeship at a participating school;
- a team mentorship approach to expose teaching residents to a variety of teaching methods, philosophies, and classroom environments;
- clear criteria for the selection of mentor teachers based on teacher effectiveness and the appropriate subject-area knowledge;
- measures of appropriate progress through the program;
- collaboration with regional education service centers or nonprofit education organizations to provide professional development or other structured learning experiences for teaching residents;
- a livable stipend for teaching residents;
- a post-completion commitment by teaching residents to serve four years at schools that were difficult to staff;
- job placement assistance for residents;
- mentorship, professional development, and networking opportunities for teaching residents up to one year after completion of the program;
- demonstration of the integral role and responsibilities of the partner school district or school in fulfilling the purpose of the program; and
- funds or donations provided by the participating higher education institution, area school district or open-enrollment charter school to demonstrate that the program could be sustained without state or grant funding.

The commissioner of higher education could accept and solicit gifts, grants, and donations from public and private entities for the Texas Teacher Residency Program.

**Impact:** To the extent one of the UT System academic institutions are selected through the competitive selection process, the academic institution will need to be prepared to establish the residency program, allocate funding to support the program and ultimately select candidates for the program.

**Effective:** September 1, 2013

Melissa V. Garcia

[HB 1777](#) by Moody, et al. and Rodriguez

Relating to a study regarding the effects on international trade of wait times at points of entry between the United States and the United Mexican States.

This bill requires that the Border Trade Advisory Committee conduct a study regarding the effects on international trade of wait times at points of entry between the United States and Mexico located within the State of Texas. The study shall include recommendations and it shall be submitted to the legislature no later than October 1, 2014.

**Impact:** The UT Austin Center for Transportation Research is represented on the Committee, and should be aware of the new study required by HB 1777.

**Effective:** June 14, 2013

Jason D. King

[HB 1926](#) by King, et al. and Hegar, et al.

Relating to the operation of the state virtual school network and courses provided through other distance learning arrangements.

This bill amends provisions of the Education Code relating to the state virtual school network. Under the bill, a school district or open-enrollment charter school cannot deny the request of a parent or student to enroll a student in an electronic course offered through the state virtual school network unless certain criteria are met, including that the school or district offers a substantially similar course or that enrollment in the course is inconsistent with the student's graduation plan or requirements for college admission or earning an industry certification.

School districts and open enrollment charter schools are entitled to funding for student enrollment and successful completion of virtual school network courses but not for more than three electronic courses per school year unless the student is enrolled in a full time online program that was operating as of January 1, 2013. A school district or open-enrollment charter school can decline to pay the cost for a student of the equivalent of more than three yearlong electronic courses during any school year. A student can enroll in additional courses at his or her own cost and a district or charter school may charge a fee for enrollment in additional courses.

In cases where a parent requests permission to enroll a student in an electronic course offered through the state virtual school network, parents have the discretion to select a course provider approved by the network's administering authority for the course. An open-enrollment charter school or school district that provides a course through distance learning can inform other districts or schools of the course and may submit information relating to the course to the Texas Education Agency (TEA). Any information submitted will be posted on the agency's website. The Commissioner for the TEA (Commissioner)

may adopt rules necessary to implement this provision, including rules governing student enrollment, but cannot implement rules regarding pricing for such courses.

The definition for course provider is expanded to include an entity that provided electronic professional development courses through the state virtual school network, including non-profit or private entities. School districts and open enrollment charter schools must adopt written policies for students with the opportunity to enroll in courses in the virtual school network and at least once per year, they must send the policy to the parent of each student enrolled at the middle or high school level.

An open enrollment charter school is eligible to act as course provider if it is rated as acceptable and can only serve as a course provider to a student within its service area or to another student in the state through agreement. Non-profit and private entities can act as course providers only if they comply with all applicable federal and state laws prohibiting discrimination, demonstrate financial solvency, and provide evidence of prior successful experience offering online courses to middle or high school students.

The TEA is required to publish in a prominent location on the virtual school network website a list of the approved courses offered and to develop a numbering system for all courses offered through the virtual school network. The administering authority for the virtual school network may enter into a reciprocity agreement with one or more states to facilitate expedited course approval. It must also establish and publish a course submission and approval process that occurs on a rolling basis and also provide for renewal of approved courses. As part of the informed choice report, the administering authority must now also provide additional information, including the name of the entity that developed and provided the course, the course completion rates and performance in the courses.

Course providers cannot promise or provide equipment or other items of value to induce a student to enroll in state virtual network courses. The Commissioner must revoke approval of courses offered by such a course provider. Finally, the TEA must conduct a study to assess the network capabilities of each school district and whether they meet specific targets. This study must be completed by December 1, 2015. The changes made by this bill go into effect during the 2013-2014 school year.

**Impact:** UT charter schools can now serve as course providers in the state virtual school network. In addition, they must develop policies and provide notice to parents of students in middle or high school of the opportunity to enroll in courses through the state virtual school network. UT charter schools can now decline to pay the cost for a student to enroll in more than three yearlong courses, unless the student is enrolled in a full-time online program as of January 1, 2013. Previously, UT Charter schools would have to pay for all courses within a normal course load.

**Effective:** June 14, 2013

Neera Chatterjee

Relating to improving access to nursing education programs.

This bill addresses two areas designed to improve access to nursing education programs:

- Common Application Form: The bill authorizes the Higher Education Coordinating Board to determine whether an electronic common admission application form for undergraduate nursing programs at institutions of higher education would be cost-effective and if so, to adopt such form. Similar authority relates to adoption of an electronic common admission application form for transferees to an undergraduate nursing education program. Such determinations of cost-effectiveness must be made by September 1, 2014.
- Nursing Faculty Loan Repayment Assistance Program: The bill mandates that the Higher Education Coordinating Board establish and administer a loan repayment assistance program for nurses serving on the faculties of nursing degree programs at institutions of higher education in a position that requires an advanced professional nursing degree. In order to be eligible for this program, a nurse must: 1) apply to the board; 2) be employed full-time for at least one year as, and be currently employed full-time as, a faculty member of a nursing degree program at an institution of higher education or a private or independent institution of higher education; and 3) comply with any additional requirements adopted by board rule. Loan repayment assistance is available for each year of full-time employment, not to exceed five years and may not exceed \$7,000 per year. Assistance is not available for a student loan that is in default. Funding for this program is provided from excess funds in the physician education loan repayment account as well as gifts and grant; if funds reallocated to the nursing faculty loan repayment assistance program from the physician account are unused, the funds are treated as though they were not reallocated. A copy of the rules and other pertinent information regarding this program must be distributed to each institution of higher education and private or independent institution of higher education, any appropriate state agency, and any appropriate professional association. Rules must be adopted by December 1, 2013.

**Impact:** If the Higher Education Coordinating Board decides that an electronic common admission application form is cost-effective, it will affect the admission process and materials used at all of the nursing schools operated by UT and will require modification to catalogues and websites. The loan repayment assistance program will affect recruitment and retention of nursing faculty.

**Effective:** September 1, 2013

Melodie Krane

[HB 3662](#) by Clardy, et al. and Seliger

Relating to Relating to the Texas Workforce Innovation Needs Program; authorizing a fee.

HB 3662 establishes the Texas Workforce Innovation Needs Program to provide selected school districts, public institutions of higher education and private or independent institutions of higher education with the opportunity to establish innovative programs designed to prepare students for careers for which there is demand in this state; and use the results of those programs to inform the governor, legislature, and commissioner concerning methods for transforming public and higher education in this state by improving student learning and career preparedness.

In order to participate in the program, a school district or institution of higher education must apply and use a prescribed form established by a rule from the commissioner of education. The application process requires each applicant to submit a detailed plan of the instruction and accountability the applicant would provide under the program. The plan must, to the greatest extent appropriate for the grade or higher education levels served under the program:

- be designed to support improved instruction of and learning by students and provide evidence of the accurate assessment of the quality of learning on campus;
- describe any waiver of an applicable prohibition, requirement, or restriction for which the district or institution of higher education intends to apply; and
- include any other information required by commissioner rule.

In addition to the foregoing requirements, HB 3662 requires the plan to either focus on engagement of students in competency-based learning as necessary to earn postsecondary credentials, including career and technical certificates; associate's degrees; bachelor's degrees; and graduate degrees; or incorporate career and technical courses into dual enrollment courses or into the early college education program under Texas Education Code Section 29.908 to provide students the opportunity to earn a career or technical certificate or associate's degree.

Of those school districts or institutions of higher education who apply, the commissioner is required to select those applicant school districts and institutions of higher education that present the plans that are most likely to be effective in producing the next generation of higher performing public schools and institutions of higher education that provide education and training in an innovative form and manner to prepare students for careers for which there is demand in this state.

HB 3662 also requires the commissioner to convene program leaders periodically to discuss methods to transform learning opportunities for all students, build cross-institution support systems and training, and share best practices tools and processes.

HB 3662 authorizes a school district or institution of higher education participating in the program or the commissioner to accept gifts, grants, or donations from any source,

including a private or governmental entity. In addition, in order to cover the costs of administering the program, the commissioner may charge a fee to a school district or institution of higher education participating in the program.

In consultation with interested school districts, institutions of higher education, and other appropriate interested persons, HB 3662 requires the commissioner to adopt rules as necessary for purposes of this newly created program.

HB 3662 also requires that not later than December 1, 2014, and not later than December 1, 2016, with the assistance of school districts and institutions of higher education participating in the program, the commissioner shall submit to the governor and the legislature reports concerning the performance and progress of the program participants. The report, submitted not later than December 1, 2014, must include any recommendation by the commissioner concerning legislative authorization necessary for the commissioner to waive a prohibition, requirement, or restriction that applies to a program participant and other school district or institution of higher education interested in beginning a similar program. To prepare for implementation of a commissioner waiver, the commissioner must seek any necessary federal waiver. This subsection of the HB 3662 would expire January 1, 2020.

**Impact:** This bill impacts UT System academic institutions to the extent any apply to participate in the Texas Workforce Innovation Needs Program or are consulted by the Commissioner for Education for input to assist with the drafting of rules related to this program.

**Effective:** June 10, 2013

Melissa V. Garcia

**SB 141** by Huffman and Davis, Sarah

Relating to the requirements for issuance of a license to practice orthotics and prosthetics.

SB 141 amends Sections 605.252 (License Eligibility) and 605.258 (Student Registration Certificate) of the Texas Occupations Code to bring them into compliance with the current national standards for the education of orthotists and prosthetists by including a graduate degree as a requirement for licensure. SB 141 also:

- Requires applicants complete a professional clinical residency that meets the requirements established by rule by the Texas Board of Orthotics and Prosthetics (Board), allowing for the possibility of using the 18-month combined residency training program now authorized by national standards;
- Allows graduate students who are currently enrolled in a graduate program to participate in a clinical residency program while still in school as long as the program certifies in writing that the student has successfully completed his or her academic prerequisites;

- Makes application of this Act prospective to January 1, 2014; and
- Requires the Board to adopt rules to implement the changes in law not later than December 1, 2013.

**Impact:** UT System health institutions offering orthotic and prosthetics residency programs must modify their programs to the extent required for compliance.

**Effective:** June 14, 2013

Allene Evans

[SB 215](#) by Birdwell, et al. and Anchia

Relating to the continuation and functions of the Texas Higher Education Coordinating Board, including related changes to the status and functions of the Texas Guaranteed Student Loan Corporation

SB 215 makes numerous changes to the Texas Higher Education Coordinating Board (THECB) functions and programs that include the following relevant to university systems and institutions of higher education:

- The bill redefines the Board's powers and duties to reflect the major functions of a higher education coordinating entity and provides that the THECB has only the powers provided by law, reserving the governance of institutions to their governing boards. The bill adds the requirement for the THECB to develop a long-range master plan that will require the board to re-evaluate the role and mission of each general academic teaching institution. The role of the THECB in establishing best practices and pilot programs is redefined and provides limitations when establishing such programs. The bill requires the THECB to administer a pilot program at selected institutions no later than January 1, 2014 to ensure that students are informed consumers with regard to student financial aid.
- SB 215 requires the Board to establish a policy on an agency-wide risk-based compliance monitoring function for ensuring: (1) that funds allocated by the THECB to the institution are distributed in accordance with law and rule; and (2) that data reported by institutions to the THECB and used for funding or policymaking decisions is correct. Factors in developing the policy and provisions on conducting the review (ex: partnering with institution's audit department; announced or un-announced visits) are included in the bill, as are notification procedures when the THECB determines through the compliance monitoring process that funds were misused or misallocated by an institution, or if there were errors in formula funding. Any final determination is reported to the institution's governing board and in determinations of formula funding errors, revisions to the appropriated amount would be calculated and reported to the governor, LBB, and comptroller.

- SB 215 requires the THECB to engage in negotiated rulemaking with university systems and institutions to identify unnecessary requests for information to eliminate them or ways to streamline the requests. The THECB is also required to engage affected institutions in negotiated rulemaking processes when adopting a policy, procedure, or rule relating to admissions policies, the allocation or distribution of funds (including financial aid or other trusted programs), certain data requests, its new compliance monitoring function, and standards to guide the board's review of new construction and the repair and rehabilitation of buildings and facilities. The THECB is also to establish methods for obtaining input from stakeholders and the general public when developing the long range master plan, implement policies to provide opportunities for public comment at each board meeting, and adopt policies for forming advisory committees.
- The bill amends the process for THECB approval of new degrees or certificate programs and provides new criteria used for the program review. The bill includes new provisions pertaining to consolidation or elimination of degree or certificate programs and allowing off-campus courses for credit within the state or distance learning courses.
- The bill changes the THECB responsibility in reviewing and approving new construction and repair and rehabilitation projects, limiting their duties and requiring the THECB to adopt standards to guide their review.
- SB 215 amends various provisions within the TEXAS Grant program, limiting eligibility to those students enrolled in a baccalaureate degree program and removing 2-year colleges from eligibility for TEXAS grant funding. The bill also requires the THECB to allocate the TEXAS grant funding "proportionally" among the remaining eligible institutions.
- SB 215 amends provisions within the Texas B-On-Time program. The changes limit the program to students earning baccalaureate degrees and limits eligibility to general academic teaching institutions except for state colleges, medical and dental units offering baccalaureate degrees, or private or independent institutions of higher education that offer baccalaureate degree programs. The bill also requires that the THECB, in collaboration with eligible entities, adopt and implement measures to improve participation in the program and improve the rate of student satisfaction of the program terms. Institutions with a loan forgiveness rate of less than 50% statewide or whose default exceeds the statewide average will be required to give training to all loan recipients enrolled at their institution.
- As to student loans, the bill converts the Texas Guaranteed Student Loan Corporation from a public nonprofit corporation to a nonprofit corporation under Chapter 22 of the Business Organization Code. The bill also changes the venue to Travis County in default suits for student loans authorized by Education Code Chapter 52.

- The bill amends various provisions within the Norman Hackerman Advanced Research Program, including administration of the program by the THECB. The Research University Development Fund provisions have also been modified: the bill changes the name of the fund to the Texas Competitive Knowledge Fund and changes the eligibility factors and funding.
- This bill requires that additional information and certification be provided by a governing board in its annual report to the THECB of each institution's list of courses. The bill also requires institutions to annually report to the governing board of the institution information regarding the condition of the buildings and facilities of the institution, including information concerning deferred maintenance with respect to those buildings and facilities as defined by the THECB.

**Impact:** The bill directly impacts UT System and its institutions since it makes significant changes in the authority of the THECB, resulting in numerous modifications to programs administered by the board. Of greatest importance, the THECB will be required to adopt a number of rules affecting the institutions in which the UT System and its institutions, through rulemaking or statutory directive, will be directly involved, the bill requires that a new compliance monitoring program be established through rulemaking and requires further information and certification by the Board of Regents in its annual list of courses and an annual report to the Board of Regents regarding the condition of its buildings and facilities.

**Effective:** September 1, 2013

Helen Bright

[SB 497](#) by Seliger, et al. and Branch

Relating to the number of semester credit hours required to earn an associate degree at public institutions of higher education.

SB 497 prohibits an institution of higher education from requiring more semester credit hours for the award of an associate degree than the minimum number of semester credit hours required by the Southern Association of Colleges and Schools for the completion of the degree unless the institution determines there is a compelling academic reason. The Texas Higher Education Coordinating Board may review an institution's associate degree programs to ensure compliance.

**Impact:** SB 497 does not directly impact UT System institutions because they do not award associate degrees. Further, the bill does not apply to an associate degree awarded to a student enrolled in the institution before 2015 fall semester, thus, to the extent that the bill would impact UTB/TSC, the partnership will have ended by the time the bill takes effect. However, the bill indirectly impacts UT System institution to the extent that students who enroll at a UT System institution continue their education may have fewer hours eligible for transfer. UT System institution academic affairs officials

should monitor Texas Higher Education Coordinating Board information regarding those institutions that are exceeding the semester credit hours to determine the potential impact for class planning purposes.

**Effective:** June 14, 2013

Priscilla Lozano

**SB 498** by Seliger, et al. and Guillen, et al.

Relating to applying credit earned by a student at a general academic teaching institution to an associate's degree at a lower-division institution of higher education previously attended by the student.

SB 498 amends Education Code, Section 61.833, by lowering from 90 to 60 the minimum number of cumulative credit hours a student must earn for the lower-division institution to consider whether the associate degree has been earned.

**Impact:** While of minimal direct impact, students transferring to a UT academic institution with an associate degree containing fewer credit hours will necessarily have fewer hours which can be transferred to the UT institution.

**Effective:** June 14, 2013

Dan Sharphorn

**SB 566** by Eltife, et al. and Clardy

Relating to the establishment of a pharmacy school at The University of Texas at Tyler.

SB 566 allows The University of Texas System Board of Regents to establish a pharmacy school at The University of Texas at Tyler. The Board of Regents are also allowed to prescribe courses leading to customary degrees offered at other leading American schools of pharmacy and may award those degrees.

The Board of Regents would support the operations and capital expenses through tuition, gifts, grants, and other institutional or system funds.

The pharmacy school would not be eligible for state funding under the formula funding system.

**Impact:** This directly impacts The University of Texas at Tyler.

**Effective:** June 14, 2013

Melissa V. Garcia

**SB 620** by Van de Putte and Allen

Relating to student loan repayment assistance for speech-language pathologists or audiologists employed by a public school or as faculty members of certain programs at public institutions of higher education.

SB 620 creates a student loan repayment program for qualified speech language pathologists or audiologists, as licensed under Chapter 401 of the Texas Occupations Code. To be eligible, a speech language pathologist or audiologist must:

- at the time of her application, be currently employed as a speech language pathologist or audiologist and have been employed in that capacity for at least one year by a public school district; or
- at the time of her application, be currently employed as a faculty member of a communicative disorders program at a public, private, or independent institution of higher education, and have been employed in that capacity for at least one year.

Repayment assistance may be provided pro-rata for part-time practitioners. The student loan eligible for repayment is to be defined by the Texas Higher Coordinating Board (“Board”), which is expressly granted rule-making authority and shall administer the program, which includes providing the repayment assistance, appointing advisory committees, soliciting and accepting gifts, grants, and donations to fund the program, and distributing program information to the appropriate institutions and agencies.

**Impact:** UT institutions will receive the Board's program rules and information to distribute to its financial aid/accounting offices, eligible academic program offices, students, etc. This program may result in UT institutions being reimbursed for loans on which they are lenders, and their financial aid/accounting staff would have to apply the funds correctly to principal and accrued interest, as provided by the law. UT institutions will not fund this program, e.g. there is no tuition set-aside.

**Effective:** September 1, 2013

Hannah D. Huckaby

**SB 1720** by Patrick, et al and Clardy

Relating to the Math and Science Scholars Loan Repayment Program for teachers who agree to teach mathematics or science in certain school districts in this state.

SB 1720 creates the Math and Science Scholars Loan Repayment Program (“Program”).

SB 1720 authorizes the Texas Higher Education Coordinating Board to provide assistance in the repayment of eligible student loans for eligible persons who agree to teach mathematics or science for a specific period in school districts that receive federal funding under Title, I, Elementary and Secondary Education Act of 1965.

SB 1720 sets forth eligibility requirements for persons to receive loan repayment assistance under the Program. Specifically, a person must:

- apply annually for the loan repayment assistance in the manner prescribed by the Coordinating Board;
- be a United States citizen;
- have completed an undergraduate or graduate program in mathematics or science;
- have a cumulative grade point average of at least 3.5 on a four-point scale or the equivalent;
- be certified under Subchapter B, Chapter 21 of the Education Code, to teach mathematics or science in a public school in this state or be enrolled in an educator preparation program to obtain that certification that is accredited by the State Board for Educator Certification and is provided by an institution of higher education or by a private or independent institution of higher education in this state;
- have been employed for at least one year as a teacher teaching mathematics or science at a public school located in a school district that receives funding under Title I, Elementary and Secondary Education Act of 1965;
- not be in default on any other education loan;
- not receive any other state or federal loan repayment assistance, including a Teacher Education Assistance for College and Higher Education (TEACH) Grant or teacher loan forgiveness;
- enter into an agreement with the Coordinating Board, as set forth in Section 61.9831(c) of the Education Code; and
- comply with any other requirement adopted by the Coordinating Board.

SB 1720 states that the initial application for the Program must include a transcript of the applicant's postsecondary coursework.

In order to receive loan assistance under the Program, SB 1720 requires that a person enter into an agreement with the Coordinating Board requiring the following provisions:

- the person will accept an offer of full-time employment to teach mathematics or science, as applicable based on the person's certification, in a public school located in a school district that receives funding under Title I, Elementary and Secondary Education Act of 1965;
- the person will complete four consecutive years of employment as a full-time classroom teacher in a school that receives federal funding under Title I,

Elementary and Secondary Education Act of 1965 whose primary duty is to teach mathematics or science, as applicable, based on the person's certification;

- beginning with the school year immediately following the last of the four consecutive school years, the person will complete four additional consecutive school years teaching in any public school in this state; and
- the person acknowledges the conditional nature of the loan repayment assistance.

In order to satisfy the teaching obligation of this agreement, SB 1720 requires the person to teach mathematics or science courses for not less than an average of four hours each school day.

When making awards to an eligible person, SB 1720 requires the Coordinating Board to determine the annual amount of loan assistance payments in any, taking into consideration the amount of available funding and other relevant considerations. SB 1720 also requires the Coordinating Board to reduce the amount of a single assistance payment or refrain from making a loan assistance payment to an eligible person as necessary to avoid making total payments to an eligible person in an amount greater than the total amount of principal and interest due on the person's eligible loans.

SB 1720 provides exceptions to the consecutive years of employment requirement under the Program. Specifically, the requirement is excused if the break in employment is a result of the person's: (1) full-time enrollment in a course of study related to the field of teaching that is approved by the State Board for Educator Certification and provided by an institution of higher education or by a private or independent institution of higher education in this state; (2) service on active duty as a member of the armed forces of the United States, including as a member of a reserve or National Guard unit called for active duty; (3) temporary total disability for a period of not more than 36 months as established by the affidavit of a qualified physician; (4) inability to secure the required employment for a period not to exceed 12 months, because of care required by a disabled spouse or child; (5) inability, despite reasonable efforts, to secure, for a single period not to exceed 12 months, of required employment; or (6) satisfaction of the provisions of any other exception adopted by the Coordinating Board for purposes of this bill.

SB 1720 provides that eligible loans for the loan the repayment program includes a loan that is for education at a public or private institution of higher education; and is received by an eligible person through an eligible lender. A loan that is in default at the time of the application by a person is not eligible for the Program.

SB 1720 also creates the Mathematics and Science Teacher Investment Fund ("Fund"). The Fund is a dedicated account in the general revenue fund and consists of gifts, grants, and other donations received for the fund; and interest and other earnings from the investment of the fund. The Fund may be used only to provide repayment assistance for the repayment of eligible loans, including related administrative costs. The Fund is exempt from the application of Section 403.095, Government Code (relating to use of dedicated revenue) and 404.071, Government Code (relating to disposition of interest on

investment). SB 1720 also allows the Coordinating Board to accept grants, gifts, or donations from any public or private entity for the purposes of the Program. All money received for the Program must be deposited in the Fund. SB 1720 also mandates that the legislature may not appropriate general revenue to the Fund.

Pursuant to SB 1720, the amount of loan repayment assistance paid by the Coordinating Board may not exceed the total amount of money available in the Fund and any other money that the Coordinating Board is legally authorized to use. Not more than 4,000 eligible persons may be provided loan repayment assistance in any school year—which will expire January 1, 2020. Notwithstanding the 4,000 person eligibility limit, not more than the following number eligible persons may be provided loan repayment assistance in in the specified school year: (1) in the 2016-2017 school year, not more than 1,000 eligible persons; (2) in the 2017-2018 school year, not more than 2,000 eligible persons; and (3) in the 2018-2019 school year, not more than 3,000 eligible persons.

SB 1720 also provides that if in any year the amount of money available for loan repayment assistance is insufficient to provide loan repayment assistance to each eligible applicant or if there are more eligible applicants than the number authorized by this section, the Coordinating Board must establish a criteria to determine which eligible applicants will be provided repayment assistance as the Coordinating Board determines appropriate. SB 1720 provides funding limitations stating that only available money in the Fund may be used for loan repayment assistance.

SB 1720 also allows for continued loan repayment assistance based upon continuing employment. Specifically, an eligible person may continue to receive loan repayment assistance if the person continues to teach in a public school after the first four years required for eligibility under the Program. However, if an eligible person transfers to a public school located in a school district that does not receive funding under Title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. Section 6301 et seq.), after the first four years required for eligibility, the person may not receive more than 75 percent of the maximum annual amount of the loan repayment assistance as determined by the board. Finally, a person who does not satisfy the applicable conditions of the Program subchapter after establishing eligibility for an award of loan repayment assistance is no longer eligible to apply for such assistance.

SB 1720 requires that the Coordinating Board to adopt rules to administer and implement the loan repayment program, including a rule providing for: the manner in which a person may apply for loan repayment assistance; and a method of awarding assistance that (i) gives first priority to applicants who are renewing their applications for loan repayment assistance provided under this subchapter; and (ii) awards any remaining available assistance according to a cumulative ranking system developed by the Coordinating Board based on the number of mathematics and science courses completed by the applicant and the grade received by the applicant for each of those courses.

SB 1720 requires the Coordinating Board to adopt, by rule, a common application form for use by new applicants and renewal applicants. This form must include a section in

which the school district for which the applicant has taught for at least one year verifies the applicant's year of employment.

Finally, SB 1720 requires the Coordinating Board to begin providing loan repayment assistance for eligible persons teaching in the 2016-2017 school year.

**Impact:** Although SB 1720 has no direct impact on UT System institutions, System academic institutions should be aware of this legislation so that each may provide its education students with information regarding the Math and Science Scholars Loan Repayment Program.

**Effective:** June 14, 2013

Melissa V. Garcia

### **Student Issues**

[HB 489](#) by Menéndez and Uresti

Relating to rights and responsibilities of persons with disabilities, including with respect to the use of service animals that provide assistance to those persons; providing penalties.

First, the bill expands the definition of "persons with a disability" to include persons with an intellectual or developmental disability, or post-traumatic stress disorder.

Second, if a person with a disability wishes to enter a public facility with a service animal, the bill forbids that person from being asked about (or required to provide) the animal's qualifications or certifications before being admitted to the facility, unless the request is made simply to understand the type of assistance the animal provides.

Third, if a person wishes to enter a facility with a service animal, but the person's disability is not readily apparent, the bill allows a staff member or manager of the facility to ask the person if animal is required because the person has a disability, and to ask what type of work or task the animal is trained to perform.

Finally, the bill caps at \$300 the fine that may be assessed against persons who violate this law, and also requires violators to perform 30 hours of community service for a government or non-profit entity that primarily serves persons who are visually-impaired or have other disabilities.

**Impact:** UT institutions should train all employees charged with safety, security and facility access control about these changes. Normally, this group will include police officers, security guards/public safety officers, parking attendants, dormitory resident assistants, dining hall/snack bar employees, receptionists and other front-desk personnel. In some instances, UT institutions will need to revise their Handbooks of Operating

Procedures or other written policies to clarify the questions that employees may ask persons about their service animals.

**Effective:** January 1, 2014

Omar A. Syed

**HB 808** by Zerwas and Deuell

Relating to the authority of a psychologist to delegate the provision of certain care to a person under the psychologist's supervision, including a person training to become a psychologist.

A licensed psychologist may delegate psychological testing and similar services if a reasonable and prudent psychologist would agree, to a provisionally licensed psychologist (a person with university awarded doctoral degree in psychology) or a newly licensed psychologist, provided that person is under the licensed psychologist's supervision. Insurance companies are required to reimburse the provider for those services.

**Impact:** Licensed psychologists can now be reimbursed by insurance companies for psychological testing and related services rendered by provisionally licensed psychologists and newly licensed psychologists under their supervision.

**Effective:** September 1, 2013

Chuck Johnstone

**SB 146** by Williams and Kolkhorst

Relating to access by a public institution of higher education to the criminal history record information of certain persons seeking to reside in on-campus housing.

The bill amends Texas Government Code Section 411.0945 to allow UT System institutions to access the non-public criminal history database maintained by the Texas Department of Public Safety (DPS) for the purpose of screening applications for student campus housing.

Only the institution's chief of police or housing office would be allowed to access the records obtained from the data base. The records could only be used for the purpose of evaluating the individual's campus housing application and all records obtained to conduct the screening must be destroyed once they are no longer required. If a criminal background check results in adverse action, the student who is subject to the adverse action must be notified. A court order or the applicant's consent would be required before the records could be disclosed or shared with any other individuals.

The institution would have to destroy any records obtained from DPS as soon as practicable after the beginning of the academic term for which the application was submitted.

**Impact:** UT System institutions now have the option to conduct a criminal history record information search for persons seeking to reside in on-campus housing. UTS 124, the Systemwide policy dealing with criminal background checks and model student criminal background check policies, are being reviewed to determine if amendments will be made to require a criminal background check for this group of individuals.

**Effective:** June 14, 2013

Barbara Holthaus

[SB 939](#) by West and Parker, et al.

Relating to reporting child abuse and neglect and to training regarding recognizing and reporting child abuse and neglect at schools, institutions of higher education, and other entities.

Regarding institutions of higher education, SB 939 amends Chapter 51 of the Education Code by adding Section 51.976 which requires a child abuse reporting policy and employee training. SB 939 requires each institution of higher education to adopt a policy governing the reporting of child abuse and neglect as required by Chapter 261 of the Family Code (*e.g.*, requiring reporting to state or local law enforcement authority; Texas Department of Family and Protective Services; state agency that operates/licenses the facility where alleged neglect or abuse occurred).

SB 939 also requires that each institution of higher education provide training for employees who are professionals in recognizing and preventing sexual abuse and other maltreatment of children and responsible for reporting such suspected occurrences. Professionals are those as defined by Section 261.101 of the Family Code, which means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The Family Code further defines “professionals” as teachers, nurses, doctors, day-care employees, and employees of a clinic or health care facility that provides reproductive services

SB 939 states that the required training must include:

- techniques for reducing a child's risk of sexual abuse or other maltreatment;
- factors indicating a child is at risk for sexual abuse or other maltreatment;
- the warning signs and symptoms associated with sexual abuse or other maltreatment and recognition of those signs and symptoms; and
- Family Code reporting requirements and procedures.

Finally, SB 939 amends Section 42.0426 of the Human Resources Code (which relates, in pertinent part, to the training of personnel at a child care facility in recognizing symptoms of child abuse, neglect, and sexual molestation and reporting requirements) by requiring

that a licensed facility require each employee who attends a training program to sign a statement verifying attendance—which must be maintained in the employee’s personnel file.

**Impact:** This bill impacts UT System institutions by requiring additional training for any professionals subject to this bill. This bill also impacts those UT System institutions that operate a licensed child-care facility.

**Effective:** September 1, 2013

Melissa V. Garcia

**SB 1525** by Zaffirini and Patrick, Diane

Relating to including disability awareness training in risk management programs required for members and advisors of student organizations at postsecondary educational institutions.

SB 1525 amends Section 51.9361(g) of the Education Code by adding a requirement that risk management programs for members and advisors of student organizations must address issues regarding persons with disabilities, including a review of applicable requirements of federal and state law, and any related policies of the institution, for providing reasonable accommodations and modifications to address the needs of students with disabilities, including access to the activities of the student organization.

This bill applies to risk management programs provided at a public or private postsecondary educational institution for the 2013-2014 academic year.

**Impact:** UT System academic institutions should become familiar with this new requirement and plan to incorporate it into their 2013-2014 risk management programs for members and advisors of student organizations.

**Effective:** June 14, 2013

Melissa V. Garcia

**SB 1531** by Seliger and Branch

Relating to providing information to entering undergraduate students at certain general academic teaching institutions to promote timely graduation.

SB 1531 requires that each general academic teaching institution provide to each first-time entering undergraduate student, including each undergraduate student who transfers to the institution, a statement that includes: a comparison of the average total academic costs paid by a full-time student who graduates from the institution in the four, five and six academic years; and an estimate of the average earnings lost by a recent graduate of the institution as a result of graduating after five or six years instead of four years. This information must be provided to each student in electronic or paper format. SB 1531 also

allows the statement of information provided to each student to be more specific than is required by the bill.

SB 1531 also requires each general academic teaching institution to include with the statement a list of actions that the student can take to facilitate graduating from the institution in a timely manner; and contact information for available academic, career, and other related support services at the institution to assist the student in that effort.

SB 1531 provides that these requirements apply beginning with undergraduate students who initially enroll in a general academic teaching institution for the 2014 fall semester.

**Impact:** UT System academic institutions are all impacted by this bill. Each academic institution must be prepared to provide the required statement of information and list of actions to undergraduate students by the 2014 fall semester.

**Effective:** September 1, 2013

Melissa V. Garcia

**SB 1720** by Patrick, et al and Clardy

Relating to the Math and Science Scholars Loan Repayment Program for teachers who agree to teach mathematics or science in certain school districts in this state.

SB 1720 creates the Math and Science Scholars Loan Repayment Program (“Program”).

SB 1720 authorizes the Texas Higher Education Coordinating Board to provide assistance in the repayment of eligible student loans for eligible persons who agree to teach mathematics or science for a specific period in school districts that receive federal funding under Title, I, Elementary and Secondary Education Act of 1965.

SB 1720 sets forth eligibility requirements for persons to receive loan repayment assistance under the Program. Specifically, a person must:

- apply annually for the loan repayment assistance in the manner prescribed by the Coordinating Board;
- be a United States citizen;
- have completed an undergraduate or graduate program in mathematics or science;
- have a cumulative grade point average of at least 3.5 on a four-point scale or the equivalent;
- be certified under Subchapter B, Chapter 21 of the Education Code, to teach mathematics or science in a public school in this state or be enrolled in an educator preparation program to obtain that certification that is accredited by the State Board for Educator Certification and is provided by an institution of higher

education or by a private or independent institution of higher education in this state;

- have been employed for at least one year as a teacher teaching mathematics or science at a public school located in a school district that receives funding under Title I, Elementary and Secondary Education Act of 1965;
- not be in default on any other education loan;
- not receive any other state or federal loan repayment assistance, including a Teacher Education Assistance for College and Higher Education (TEACH) Grant or teacher loan forgiveness;
- enter into an agreement with the Coordinating Board, as set forth in Section 61.9831(c) of the Education Code; and
- comply with any other requirement adopted by the Coordinating Board.

SB 1720 states that the initial application for the Program must include a transcript of the applicant's postsecondary coursework.

In order to receive loan assistance under the Program, SB 1720 requires that a person enter into an agreement with the Coordinating Board requiring the following provisions:

- the person will accept an offer of full-time employment to teach mathematics or science, as applicable based on the person's certification, in a public school located in a school district that receives funding under Title I, Elementary and Secondary Education Act of 1965;
- the person will complete four consecutive years of employment as a full-time classroom teacher in a school that receives federal funding under Title I, Elementary and Secondary Education Act of 1965 whose primary duty is to teach mathematics or science, as applicable, based on the person's certification;
- beginning with the school year immediately following the last of the four consecutive school years, the person will complete four additional consecutive school years teaching in any public school in this state; and
- the person acknowledges the conditional nature of the loan repayment assistance.

In order to satisfy the teaching obligation of this agreement, SB 1720 requires the person to teach mathematics or science courses for not less than an average of four hours each school day.

When making awards to an eligible person, SB 1720 requires the Coordinating Board to determine the annual amount of loan assistance payments in any, taking into consideration the amount of available funding and other relevant considerations. SB 1720 also requires the Coordinating Board to reduce the amount of a single assistance

payment or refrain from making a loan assistance payment to an eligible person as necessary to avoid making total payments to an eligible person in an amount greater than the total amount of principal and interest due on the person's eligible loans.

SB 1720 provides exceptions to the consecutive years of employment requirement under the Program. Specifically, the requirement is excused if the break in employment is a result of the person's: (1) full-time enrollment in a course of study related to the field of teaching that is approved by the State Board for Educator Certification and provided by an institution of higher education or by a private or independent institution of higher education in this state; (2) service on active duty as a member of the armed forces of the United States, including as a member of a reserve or National Guard unit called for active duty; (3) temporary total disability for a period of not more than 36 months as established by the affidavit of a qualified physician; (4) inability to secure the required employment for a period not to exceed 12 months, because of care required by a disabled spouse or child; (5) inability, despite reasonable efforts, to secure, for a single period not to exceed 12 months, of required employment; or (6) satisfaction of the provisions of any other exception adopted by the Coordinating Board for purposes of this bill.

SB 1720 provides that eligible loans for the loan the repayment program includes a loan that is for education at a public or private institution of higher education; and is received by an eligible person through an eligible lender. A loan that is in default at the time of the application by a person is not eligible for the Program.

SB 1720 also creates the Mathematics and Science Teacher Investment Fund ("Fund"). The Fund is a dedicated account in the general revenue fund and consists of gifts, grants, and other donations received for the fund; and interest and other earnings from the investment of the fund. The Fund may be used only to provide repayment assistance for the repayment of eligible loans, including related administrative costs. The Fund is exempt from the application of Section 403.095, Government Code (relating to use of dedicated revenue) and 404.071, Government Code (relating to disposition of interest on investment). SB 1720 also allows the Coordinating Board to accept grants, gifts, or donations from any public or private entity for the purposes of the Program. All money received for the Program must be deposited in the Fund. SB 1720 also mandates that the legislature may not appropriate general revenue to the Fund.

Pursuant to SB 1720, the amount of loan repayment assistance paid by the Coordinating Board may not exceed the total amount of money available in the Fund and any other money that the Coordinating Board is legally authorized to use. Not more than 4,000 eligible persons may be provided loan repayment assistance in any school year—which will expire January 1, 2020. Notwithstanding the 4,000 person eligibility limit, not more than the following number eligible persons may be provided loan repayment assistance in in the specified school year: (1) in the 2016-2017 school year, not more than 1,000 eligible persons; (2) in the 2017-2018 school year, not more than 2,000 eligible persons; and (3) in the 2018-2019 school year, not more than 3,000 eligible persons.

SB 1720 also provides that if in any year the amount of money available for loan repayment assistance is insufficient to provide loan repayment assistance to each eligible

applicant or if there are more eligible applicants than the number authorized by this section, the Coordinating Board must establish a criteria to determine which eligible applicants will be provided repayment assistance as the Coordinating Board determines appropriate. SB 1720 provides funding limitations stating that only available money in the Fund may be used for loan repayment assistance.

SB 1720 also allows for continued loan repayment assistance based upon continuing employment. Specifically, an eligible person may continue to receive loan repayment assistance if the person continues to teach in a public school after the first four years required for eligibility under the Program. However, if an eligible person transfers to a public school located in a school district that does not receive funding under Title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. Section 6301 et seq.), after the first four years required for eligibility, the person may not receive more than 75 percent of the maximum annual amount of the loan repayment assistance as determined by the board. Finally, a person who does not satisfy the applicable conditions of the Program subchapter after establishing eligibility for an award of loan repayment assistance is no longer eligible to apply for such assistance.

SB 1720 requires that the Coordinating Board to adopt rules to administer and implement the loan repayment program, including a rule providing for: the manner in which a person may apply for loan repayment assistance; and a method of awarding assistance that (i) gives first priority to applicants who are renewing their applications for loan repayment assistance provided under this subchapter; and (ii) awards any remaining available assistance according to a cumulative ranking system developed by the Coordinating Board based on the number of mathematics and science courses completed by the applicant and the grade received by the applicant for each of those courses.

SB 1720 requires the Coordinating Board to adopt, by rule, a common application form for use by new applicants and renewal applicants. This form must include a section in which the school district for which the applicant has taught for at least one year verifies the applicant's year of employment.

Finally, SB 1720 requires the Coordinating Board to begin providing loan repayment assistance for eligible persons teaching in the 2016-2017 school year.

**Impact:** Although SB 1720 has no direct impact on UT System institutions, System academic institutions should be aware of this legislation so that each may provide its education students with information regarding the Math and Science Scholars Loan Repayment Program.

**Effective:** June 14, 2013

Melissa V. Garcia

[SB 1907](#) by Hegar and Kleinschmidt, et al.

Relating to the transportation and storage of firearms and ammunition by concealed handgun license holders in private vehicles on the campuses of certain institutions of higher education.

This bill forbids an institution of higher education from adopting or enforcing any rule, regulation or provision, posting notices, or taking any other action meant to prohibit or place restrictions on the lawful storage or transportation in private motor vehicles of firearms or ammunition by Concealed Handgun License holders on the streets, driveways, parking lots, parking garages, or other parking areas located on the campus of the institution.

**Impact:** UT System institutions will no longer be able to prevent students or others who hold Concealed Handgun Licenses from lawfully storing or transporting firearms or ammunition in their private vehicles on institution campuses. UT System police policies and procedures will need to be updated to reflect this change, and other policies and procedures may need to be established to address any issues or concerns created by this change.

**Effective:** September 1, 2013

Omar Syed

### **Junior Colleges**

[SB 414](#) by Ellis, et al. and Davis, et al.

Relating to a study and report regarding authorizing certain public junior colleges to offer baccalaureate degree programs to address regional workforce needs.

SB 414 requires the Texas Higher Education Coordinating Board, using existing funds, to conduct a study of regional workforce needs in this state to determine the regions of the state that would benefit from the authorization of baccalaureate degree programs in the field of nursing and in the field of applied sciences at public junior colleges serving the region and appropriate metrics for determining whether a public junior college should offer those degree programs. In conducting its study, the Coordinating board is required to consult with at least one representative of each of the following:

- four-year institutions of higher education;
- two-year institutions of higher education;
- regional businesses;
- professional associations; and

- any other entity the commissioner of higher education considers appropriate.

SB 414 also requires, not later than August 1, 2014, the Coordinating Board to submit to each legislative standing committee with primary jurisdiction over higher education the results of its study under this section and recommendations for legislative or other action.

**Impact:** Although SB 414 has no direct impact on UT System institutions, each institution should be aware of its content in the event the Coordinating Board seeks consultation and/or information related to this study.

**Effective:** June 14, 2013

Melissa V. Garcia

### **Elementary and Secondary Education**

**HB 5** by Aycock, et al. and Patrick, et al.

Relating to public school accountability, including assessment, and curriculum requirements; providing a criminal penalty.

The summary focuses on the major areas impacted by this omnibus education bill which primarily affects charter schools of UT System institutions but also directly impacts UT System institutions.

Assessments:

- Section 31 amends Section 39.023 of the Education Code and requires that the Texas Education Agency (TEA) redevelop assessments administered to significantly cognitively disabled students in a manner consistent with federal law. Such an assessment may not require a teacher to prepare tasks or materials for a student who will be taking such a test. In addition, Section 31 amends Section 39.023 such that many of the end-of-course/State of Texas Assessments of Academic Readiness (STAAR) for secondary-level courses are eliminated. The ones that remain are Algebra I, Biology, US History, and combined/reading and writing tests for English I and II. These remaining assessments will no longer account for 15% of a student's grade for the course. These changes go into effect during the 2013-2014 school year. Section 31 also details the release schedule for STAAR assessment question and answer keys and requires that all assessment results be reported within 21 days after the test is administered.
- Section 34 amends Section 39.0238 of the Education Code and requires the TEA to adopt or develop postsecondary readiness assessment instruments for Algebra II and English III that are optional for a school district's use. A school district that opts to administer the assessment must administer the assessment to each student enrolled in a course for which a postsecondary readiness assessment

instrument is adopted or developed and must report the results to the TEA. The TEA may not use the results for accountability purposes for a school campus or district; a school district may not use the results for the purpose of teaching evaluations or determining a student's final course grade or class rank for the purpose of graduation; and an institution of higher education may not use the results for admission purposes or to determine eligibility for a TEXAS grant.

- Section 35 amends Section 39.025 of the Education Code such that the Commissioner of the TEA (Commissioner) is required to implement a method where an advanced placement test, international baccalaureate test, SAT subject test, the SAT, ACT, PSAT or ACT-Plan, or any other national recognized test used by institutions of higher education to award credit may be used to satisfy the end-of-course assessment requirements for graduation in an equivalent course. In addition, a student enrolled in a college preparatory course who satisfies the Texas Success Initiative requirements including the college readiness benchmarks on an assessment adopted by the Texas Higher Education Coordinating Board (THECB) also satisfies the end-of-course assessment requirements in an equivalent course. Finally, an admission, review and dismissal committee for a special education student will determine whether the student needs to pass an end of course assessment to receive a high school diploma.
- Section 37 adds Section 39.0263 of to the Education Code and prohibits a school district from administering more than two benchmark assessment instruments to a student to prepare the student for a corresponding state-administered assessment. This provision does not apply to a college preparation assessment including the PSAT, ACT-Plan, SAT, ACT, an advance placement test, an international baccalaureate test or classroom examination adopted and administered by a teacher.
- Section 32 amends Section 39.0232 of the Education Code and prohibits the use of an end-of-course assessment in determining a student's class ranking for any purpose, including entitlement to automatic college admission or as a sole criterion in the determination of whether to admit the student to a general academic teaching institution in Texas.

#### High School Foundation Program:

- Section 16 amends Section 28.025 of the Education Code by eliminating the Minimum, Recommended, and Distinguished Achievement High School Programs beginning in the 2014-2015 school year and creating the High School Foundation Program (foundation program). The Commissioner must adopt a transition plan to implement the foundation program.
- A student who enters ninth grade before the 2014-2015 school year can complete the curriculum requirements for graduation under the foundation program or the high school program he or she had been participating in prior to the 2014-2015 school year. The Commissioner must allow a student to graduate if he or she is

completing his or her fourth year of high school during the 2013-2014 school year and does not meet the curriculum requirements of the high school program he or she was participating in if that person would meet the requirements established under the foundation program.

- Upon entering ninth grade, each student must indicate, in writing, which endorsement the student intends to earn. There are five distinct endorsements: science, technology, engineering, and mathematics (STEM); business and industry; public services; arts and humanities; and multidisciplinary studies. A student can graduate under the foundation program without an endorsement if the student and the student's parent or guardian are advised by a school counselor of the benefits of graduating with an endorsement and if the student's parent or guardian files with the counselor written permission allowing the student to graduate without an endorsement.
- The State Board of Education (SBOE) must require the foundation program to include the successful completion of: four credits in English language arts including English I, II, and III and an advanced course; three credits in mathematics including Algebra I, geometry, and an advanced mathematics course; three credits in science including biology, an advanced science course, and integrated physics and chemistry or another advanced science course; three credits in social studies including US History, one-half credit in US Government, one-half credit in economics, and a combined world history/world geography course; two credits in the same language other than English or two credits in computer programming; one credit in fine arts, one credit in physical education, and five elective credits. Certain substitutions for these courses may or must be allowed. A student may earn a distinguished level of achievement under the foundation program by successfully completing all of the required curricula as well as: an additional credit in mathematics which must include Algebra II, an additional science course, and the curriculum requirements for at least one endorsement.
- In order to earn an endorsement the SBOE must require a student to also successfully complete, in addition to the required curricula: four credits in mathematics, which must include an advanced mathematics course or an advanced career and technology course; four credits in science, which must include an advanced science course or an advanced career and technology course, and two additional elective credits. The SBOE must adopt the curriculum requirements for each endorsement, with the direct participation of educators and business, labor and industry representatives. The SBOE must provide students with multiple options for earning each endorsement. Prior to a student's junior year the SBOE, must allow a student to enroll in courses under more than one endorsement curriculum. Each school district must make available courses that allow a student to complete the curriculum requirements for at least one endorsement. A school district that offers only one endorsement curriculum must offer the multidisciplinary studies curriculum.

- The SBOE, with the THECB, must adopt rules to ensure that a student who successfully completes the courses in the core curriculum of an institution of higher education has complied with the foundation program or for an endorsement.
- A student may also earn a performance acknowledgement by satisfying requirements adopted by the SBOE and for earning a nationally or internationally recognized business or industry certificate or license or for outstanding performance: in a dual credit course; bilingualism and biliteracy; on a college advanced placement or international baccalaureate exam; or on the PSAT, the ACT-Plan, the SAT, or the ACT.
- At the end of each school year, each school district must report through the Public Education Information Management System (PEIMS) the number of students within the district who: enrolled in the foundation program, pursued the distinguished level of achievement, and enrolled in a program to earn an endorsement.

Accountability:

- Section 42 amends Section 39.053 of the Education Code and requires the Commissioner to consider new indicators of student achievement to evaluate district and campus performance. This provision takes effect during the 2013-2014 school year. The new indicators include: the percentage of students who successfully completed the curriculum requirements for distinguished level of achievement under the foundation program; the percentage of students who successfully completed the curriculum requirements for an endorsement under the foundation program; and at least three other additional indicators. These additional indicators must include either the percentage of students who satisfy the Texas Success Initiative college readiness benchmarks on an assessment instrument in reading, writing or math or the number of students who earn: an associate's degree; an industry certification; at least 12 hours of postsecondary credit required for the foundation program; or at least 30 hours of postsecondary credit required for the foundation program or an endorsement. An indicator under Subsection (c) cannot negatively affect the Commissioner's review of a school district or campus if that institution is already achieving at the highest level for that indicator. In addition, in computing dropout and completion rates, the Commissioner shall exclude students who were previously reported as dropouts, including a student who is reported as dropout, reenrolls and then drops out again, regardless of the number of times of reenrollment and dropping out.
- Section 44 amends Section 39.054 of the Education Code and requires the Commissioner to evaluate school district and campus performance and assign each district a performance rating of A, B, C, D, or F. The Commissioner is required to determine the criteria for each designated performance rating. A rating of A, B, or C reflects acceptable performance. A rating of D or F reflects unacceptable performance. In addition, the Commissioner shall assign each

campus a performance rating of exemplary, recognized, acceptable and unacceptable, with the first three representing acceptable performance and the final rating reflecting unacceptable performance. A district may not receive a rating of A if any campus within the district is rated as unacceptable. The performance rating of each district and campus must be made public by August 8 each year. This section takes effect during the 2016-2017 school year.

- Section 46 adds Section 39.0545 to the Education Code and requires districts to evaluate and assign a rating for district and campus performance in community and student engagement. A school district must evaluate a number of categories of performance at each campus including, but not limited to, fine arts, wellness and physical education, and opportunities for students to participate in community service projects. This section takes effect during the 2013-2014 school year.
- Sections 49-52 amend Sections 39.082, 39.0923, 39.083 of the Education Code and add 39.0824 to the Education Code. These provisions all relate to financial accountability. The School and Charter Financial Integrity Rating System of Texas (FIRST) and financial solvency system are combined into a single accountability rating system for school districts and open enrollment charter schools. The Commissioner is to adopt indicators and assign a point value to each indicator. The indicators adopted will be evaluated at least once every three years. Each open enrollment charter school and school district will receive a financial accountability rating which will be made public by August 8 each year. The Commissioner shall adopt rules necessary to implement the changes by March 1, 2015. A school district or open enrollment charter school that receives the lowest rating must submit a corrective action plan to the Commissioner to address the financial weaknesses and strategies for improvement. The Commissioner may impose sanctions for failure to submit or implement a required corrective action plan. This provision goes into effect beginning with the 2014-2015 school year.
- Sections 53-55 amend Sections 39.201-39.203 of the Education Code and require the Commissioner to award distinction designations for outstanding performance in attainment of postsecondary readiness as well as in improvement of student achievement and performance, in closing student achievement differentials, and in academic achievement only for English language arts, math, science, and social studies. The Commissioner will consider additional factors when making a designation and such designations will be made publicly available with the performance ratings.
- Section 58 adds Section 39.309 of the Education Code and requires the TEA to develop a website known as the Texas School Accountability Dashboard for the public to access district and campus accountability information. Finally, under Section 60, which adds Section 39.363 to the Education Code, the TEA must publish campus performance in community and student engagement, as well as performance ratings, distinction designations, and financial accountability ratings on its website by October 1 of each year.

## College Admission:

- Automatic Admission:
  - Section 64 amends Section 51.803 of the Education Code and requires that each general academic teaching institution grant admission to an applicant as an undergraduate student if the applicant graduated in the top 10 percent of his or her graduating class in one of the two school years preceding the academic year for which the applicant is seeking to enroll and the student successfully completed, at a public high school, the curriculum requirements for distinguished level of achievement under the foundation program, or for those high schools to which Section 28.025 of the Education Code does not apply, the equivalent to a distinguished level of achievement. The Commissioner and THECB must adopt rules together to establish the eligibility requirements for admission under this section so that students participating in the recommended or advanced high school programs are not affected by participation in such programs.
  - Section 18 amends Section 28.026 of the Education Code and requires the governing body of open-enrollment charter schools that provide high school education to post in each high school provided by the charter school a sign in each counselor's office, each principal's office, and in each administrative building the substance of Section 51.083 regarding automatic college admission and stating the curriculum requirements for financial aid authorized under Title 3. In addition, each open enrollment charter school must provide a detailed explanation of Section 51.083 and financial aid under Title 3 to each high school counselor and student. In providing notice, a school district or open-enrollment charter school must use a form promulgated by the Commissioner.
- Other Admission:
  - Section 65 amends Section 51.805 of the Education Code whereby a student who does not qualify for automatic admission may apply to any general academic teaching institution if the student successfully completed: the ACT's College Readiness Benchmarks on the ACT or earned a score of at least 1,500 out of 2,400 on the SAT, the curriculum requirements under the foundation program, or for those high schools to which Section 28.025 of the Education Code does not apply, the equivalent to the foundation program. The Commissioner and THECB must adopt rules together to establish the eligibility requirements for admission under this section so that admission requirements for students participating in the minimum, recommended or advanced high school programs are not more stringent than the admission requirements for students participating in the foundation program.

**Impact:** The provisions addressed substantively impact the curriculum offered at UT institution charter schools as well as the assessments that are administered to

students. In addition, many accountability provisions have been amended. Certain changes require action such as notice to students relating to automatic admission and additional reporting to PEIMS. In addition, UT System academic institutions should be aware of the changes to college admission due to the implementation of the foundation program.

**Effective:** June 10, 2013

Neera Chatterjee

[HB 1741](#) by Naishtat and West

Relating to requiring child safety alarms in certain vehicles used by child-care facilities to transport children.

HB 1741 requires a licensed day-care center to equip each vehicle owned or leased by the facility with an electronic child safety alarm. The alarm system would prompt the driver of a vehicle to inspect the vehicle to determine whether children were in the vehicle before the driver exits the vehicle. The licensed day-care center must ensure that the alarm system is properly maintained and used when transporting children.

This bill would only apply to vehicles purchased or leased on or after December 31, 2013.

HB 1741 requires the Department of Family and Protective Services to adopt rules implementing this bill.

**Impact:** To the extent any UT System institution operates a licensed day-care center, they should be aware of the requirement to install an electronic child safety alarm system on any vehicle purchased or leased on or after December 31, 2013.

**Effective:** December 31, 2013

Melissa V. Garcia

[HB 2549](#) by Patrick, Diane and Paxton

Relating to the periodic review and revision of college and career readiness standards in public education.

The bill imposes a new obligation on “vertical teams.” Vertical teams are committees composed of public school educators and institution of higher education faculty appointed by the commissioners of education and higher education. The teams are responsible for recommending and supporting high school curriculum and strategies to ensure high school students are academically prepared for entry into higher education. The bill requires the vertical teams to also periodically review and revise the college readiness standards and expectations and recommend revised standards for approval by the Commissioner of Education and the Coordinating Board.

The Commissioner of Education and the Coordinating Board by rule must establish a schedule for the periodic review.

**Impact:** The bill does not impact UT institution operations. UT institutions should monitor and participate in, to the extent possible, the activities of the committee.

**Effective:** June 14, 2013

Esther L. Hajdar

**SB 2** by Patrick and Aycock

Relating to charter schools and home-rule charter school districts, including establishment of the Charter School Authorizing Authority.

SB 2 is a comprehensive bill to overhaul the laws relating to authorizing, governing, and establishing charter schools in Texas. The bill transfers significant authority from the State Board of Education (“SBOE”) to the Commissioner of the TEA (“Commissioner”). Numerous notable provisions will impact charter schools at UT System institutions:

- Section 1 of SB 2 provides that if an independent school district (ISD) intends to sell, lease or use for any non-ISD purpose an unused or underused ISD facility, it must first give each open-enrollment charter school located wholly or partly within its boundaries the opportunity to make an offer to purchase, lease or use the facility before offering the facility for sale or lease to any other entity. The ISD is not obligated to accept the open-enrollment charter school’s offer. Also under Section 1 of SB 2, ISDs who provide services to a charter school pursuant to a contract are prevented from charging an amount greater than the cost of providing the services.
- Section 9 amends Section 12.101 of the Education Code to authorize the Commissioner, rather than the SBOE, to grant an open-enrollment charter on the application of an eligible entity. SB 2 provides that the Commissioner shall thoroughly investigate and evaluate each applicant, in coordination with a designated member of the SBOE, and grant a charter only to an applicant that meets financial, governing, educational and operational standards adopted by the Commissioner. In particular, an applicant seeking a charter must also be able to establish that in the preceding 10 years it (or its affiliate or substantially related entity) has not had charter in Texas or a similar charter issued by another state surrendered, revoked, denied renewal or returned.

Section 9 of SB 2 provides limits on the number of charters that may be granted in future years, but allows charter holders to establish new campuses under an existing charter if identified conditions are satisfied. Section 9 specifies that the initial term of a charter granted to an open-enrollment charter school under this section is five years.

- Section 11 of SB 2 adds Section 12.1013 to the Education and requires the Commissioner to select a center for education research to prepare an annual report concerning the performance of open-enrollment charter schools by authorizer compared to campus charters and matched traditional campuses. Section 11 provides details on the type of information that the report must contain and the format in which the report should be prepared.
- Section 12 of SB 2 adds Section 12.1014 to the Education Code, which authorizes the Commissioner to grant a charter on the application of an eligible entity for an open-enrollment charter school intended to primarily serve students eligible to receive special education services under Chapter 29 of the Education Code. Section 12 provides that the Commissioner and State Board for Educator Certification shall adopt rules necessary to administer this provision of SB 2.
- Section 14 of SB 2 provides that open-enrollment charter schools are subject to certain conditions, including a prohibition, restriction, or requirement relating to public school accountability set forth in Chapter 39 of the Education Code. This section also requires the TEA to assist an open-enrollment charter school's compliance with requirements related to the Public Education Information Management System (PEIMS), during the charter school's first three years of operation.
- Section 16 of SB 2 amends Section 12.1055 of the Education Code and creates a parallel structure between charter school and school districts, comparing the governing body of a charter school to that of a board of trustees and the chief executive officer or educational leader of a charter school to that of a superintendent. Additionally this section is further amended to also create parallel structure in regards to employment and nepotism. Section 16 of SB 2 prohibits nepotism in an open-enrollment charter beginning with all persons hired after September 1, 2013. All persons employed prior to the enactment date are considered grandfathered and are not prohibited from continuing their employment with the charter school. To further support the prohibition against nepotism, Section 47 of SB 2 repeals Section 12.1055(b) of the Education Code which allowed nepotism in certain circumstances.
- Section 18 of SB 2 contains additional criteria the Commissioner should consider and adopt as part of the charter application and approval procedure. This section states that the Commissioner should give priority to applications that propose for open-enrollment charter schools located in the attendance zone of a school district campus that received an unacceptable performance rating during the two preceding years.
- Section 20 of SB 2 provides new parameters for a charter school application outlining academic, operational, and financial expectations, including applicable performance frameworks. SB 2 provides that the charter school will be evaluated by these specified parameters for purposes of renewal, denial of renewal, expiration, revocation, or other intervention for the charter. Additionally, Section

20 requires an applicant to provide certain information relating to any management company providing services to the charter. Section 20 also expressly articulates that the governing body of a charter is responsible for overseeing any management company providing services for the school and may not delegate ultimate responsibility for the school.

- Section 24 of SB 2 adds Section 12.1141 to the Education Code to establish the requirements for renewal of a charter school contract. SB 2 states that the Commissioner shall develop and by rule adopt a procedure for renewal, denial of renewal, or expiration of a charter at the end of its term. The bill specifies that the procedure must include consideration of the performance under Chapter 39 of the charter holder and each campus operating under the charter. The bill also specifies that the renewal procedure must include three distinct processes: expedited renewal, discretionary consideration of renewal or denial of renewal, and expiration. To renew a charter, the charter holder must submit a petition for renewal to the Commissioner in the time and manner established by commissioner rule. Section 24 contains significant detail on the criteria the Commissioner will consider when assessing renewal petitions, depending on the distinct process involved. SB 2 provides that the Commissioner's decision to deny renewal of a charter is subject to review by the State Office of Administrative Hearings ("SOAH").
- Section 25 of SB 2 sets forth two additional criteria for which a charter school may be revoked: (1) a failure to satisfy performance framework standards adopted under Section 12.1181 of the Education Code; and (2) a determination by the Commissioner that the charter school is imminently insolvent. Section 26 of SB 2 requires the Commissioner to adopt an informal procedure for charter revocation and reconstitution of the governing board. A decision by the Commissioner to revoke a charter is also subject to review by SOAH. Upon revocation, the bill authorizes the Commissioner to manage the school until alternative arrangements are made for students, and authorizes the Commissioner to assign operations to another charter holder.
- Section 30 of SB 2 requires the Commissioner to adopt rules for performance frameworks that establish standards for measuring performance of open-enrollment charters and separate specific performance frameworks to measure performance of alternative education accountability charters under Chapter 39 of the Education Code. The required frameworks shall be based on national best practices and may include a variety of standards. In developing the performance frameworks, the Commissioner shall seek advice from charter holders, members of the governing bodies of charters and other interested persons. The Commissioner shall evaluate a charter's performance annually based upon these frameworks.
- Section 34, 39, and 46 of SB 2 require certain information to be posted on a charter school's website. Specifically, Section 34 requires the names of the members of a charter school's governing board to be posted on the home page of

the school's website, Section 39 requires charters to post financial reports and the salary of the superintendent or chief executive officer, and Section 46 requires the charter school's financial statement to be posted on the school's website.

- Section 38 of SB 2 requires a person employed as a principal or teacher at an open-enrollment charter school to hold at least a baccalaureate degree.
- Section 42 of SB 2 requires that an open-enrollment charter school require its students to recite the pledge of allegiance to the United States and Texas flags once per day, followed by a moment of silence. Students may be excused from reciting the pledge of allegiance upon written request from a parent or guardian.

**Impact:** The bill sets forth many new requirements and considerations that will impact existing or proposed charter schools operated by UT System institutions. Employees involved in the operation of charter schools or the planning of new charter schools should be aware of SB 2 and the many changes in the authorization and governance of charter schools, specifically open-enrollment charter schools. Charter school administrators should particularly be aware of the performance frameworks by which their schools will be evaluated. Charter school administrators should also pay particular attention to the increased qualifications necessary for individuals employed as teachers and the prohibition against nepotism for all of its employees. The bill also requires several items to be displayed on a charter school's website and those involved with charter school websites must include the specified information. Charter school administrators should also be aware of the direct impact on students' daily schedules, which will now include a daily recitation of pledges to the United States and Texas flags, as well as a moment of silence.

**Effective:** September 1, 2013

Zeena Angadicheril

**SB 39** by Zaffirini and Naishtat

Relating to the evaluation and instruction of public school students with visual impairments.

SB 39 requires the Texas Education Agency to develop and administer a comprehensive statewide plan for the education of children with visual impairments that includes methods to ensure that these children that receive special education services in school districts receive an evaluation of the impairment, and instruction in an expanded core curriculum, including instruction in skills being added by the bill, such as braille; social interaction skills; assistive technology; independent living; recreation and leisure; self-determination and sensory efficiency. The bill also provides that the individualized education plan for these students must include information about the arrangements that have been made to provide the student with the evaluation and instruction required.

**Impact:** This bill impacts UT System institution charter schools that enroll visually impaired students because it provides for additional instruction and provides that the individualized education plan must include a detailed description of the arrangements

made to provide the visually impaired student with the evaluation and instruction required. Further, the bill expands instruction to include compensatory skills, such as braille, social interaction skills; assistive technology; independent living; recreation and leisure; self-determination and sensory efficiency. UT institution charter schools should ensure that individuals responsible for individualized education plans are aware of the requirements under the bill.

**Effective:** June 14, 2013

Priscilla Lozano

[SB 123](#) by Rodriguez and Marquez, et al.

Relating to the authority of the commissioner of education to issue subpoenas and conduct accreditation investigations.

SB 123 authorizes the commissioner of education to issue a subpoena to compel the attendance of a witness or the production of evidence in connection with special accreditation investigations conducted in response to a complaint that inaccurate data is reported through the Public Education Information Management System (PEIMS) or other state or federally required reports relating to public school accountability.

**Impact:** SB 123 impacts UT System institution charter schools because it authorizes the commissioner of education to issue a subpoena to compel the attendance of a witness or the production of evidence in connection with special accreditation investigations regarding public school accountability.

**Effective:** June 14, 2013

Priscilla Lozano

[SB 376](#) by Lucio and Rodriguez, et al.

Relating to breakfast for certain public school students.

This bill requires a school district campus or open enrollment charter school that is participating in the national school breakfast program per the Child Nutrition Act of 1966 (42 U.S.C. Section 1773) to provide a free breakfast to each student during school hours if 80 percent or more of the students qualify for a free or reduced-price breakfast. A waiver of this requirement, not to exceed one year, shall be granted if the board of trustees of a school district or the governing board of an open-enrollment charter school vote to request a waiver at the annual meeting involving adoption of the budget. Before a vote to waive the requirement, the board of trustees or the governing board must list the waiver as a separate item on the agenda and allow public comment.

The legislature does not intend for this law to change or expand the eligibility requirements under the Child Nutrition Act of 1966. In addition, any new duty imposed as a result of this bill can be performed through the appropriations provided by the

legislature and federal funding. This bill goes into effect during the 2014-2015 school year.

**Impact:** The bill impacts UT institution charter schools only to the extent that they participate in the national school breakfast program. If they do participate and if 80 percent of the students qualify for a free or reduced-price breakfast, UT institution charter schools will have to budget for the required free breakfast for all students, unless a waiver is granted. However, the charter schools should receive sufficient state and federal funding to help cover this additional cost.

**Effective:** September 1, 2013

Neera Chatterjee

[\*\*SB 460\*\*](#) by Deuell and Coleman

Relating to training for public school teachers in the detection and education of students at risk for suicide or with other mental or emotional disorders and the inclusion of mental health concerns in coordinated school health efforts.

SB 460 requires instruction in the detection of students with mental or emotional disorders as a part of the training for any education certificate that required a person to possess a bachelor's degree. The instruction must be developed by a panel of experts appointed by the Board of Educator Certification and include information on the characteristics and identification of mental and emotional disorders, strategies for intervention, and appropriate ways to notify a child's parent or guardian.

**Impact:** UT System academic institutions must add a required course of study to the curriculum for degrees in education.

**Effective:** September 1, 2013

Dan Sharphorn

[\*\*SB 939\*\*](#) by West and Parker, et al.

Relating to reporting child abuse and neglect and to training regarding recognizing and reporting child abuse and neglect at schools, institutions of higher education, and other entities.

Regarding institutions of higher education, SB 939 amends Chapter 51 of the Education Code by adding Section 51.976 which requires a child abuse reporting policy and employee training. SB 939 requires each institution of higher education to adopt a policy governing the reporting of child abuse and neglect as required by Chapter 261 of the Family Code (*e.g.*, requiring reporting to state or local law enforcement authority; Texas Department of Family and Protective Services; state agency that operates/licenses the facility where alleged neglect or abuse occurred).

SB 939 also requires that each institution of higher education provide training for employees who are professionals in recognizing and preventing sexual abuse and other maltreatment of children and responsible for reporting such suspected occurrences. Professionals are those as defined by Section 261.101 of the Family Code, which means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The Family Code further defines “professionals” as teachers, nurses, doctors, day-care employees, and employees of a clinic or health care facility that provides reproductive services.

SB 939 states that the required training must include:

- techniques for reducing a child's risk of sexual abuse or other maltreatment;
- factors indicating a child is at risk for sexual abuse or other maltreatment;
- the warning signs and symptoms associated with sexual abuse or other maltreatment and recognition of those signs and symptoms; and
- Family Code reporting requirements and procedures.

Finally, SB 939 amends Section 42.0426 of the Human Resources Code (which relates, in pertinent part, to the training of personnel at a child care facility in recognizing symptoms of child abuse, neglect, and sexual molestation and reporting requirements) by requiring that a licensed facility require each employee who attends a training program to sign a statement verifying attendance—which must be maintained in the employee’s personnel file.

**Impact:** This bill impacts UT System institutions by requiring additional training for any professionals subject to this bill. This bill also impacts those UT System institutions that operate a licensed child-care facility.

**Effective:** September 1, 2013

Melissa V. Garcia

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## Medical Education

[HB 729](#) by Price and Deuell

Relating to access to criminal history record information by certain hospitals and other facilities.

HB 729 permits a public or nonprofit hospital or hospital district to conduct criminal background checks on students enrolled in educational programs who are placed at the hospital for educational purposes using the DPS non-public criminal records data base. It also permits such hospitals to refuse to permit such a student to be present at the hospital if the student refuses to provide information needed to conduct a background check, or if the background check reveals a conviction or adjudication that renders the student unqualified or unsuitable to be at the hospital for educational purposes.

Another section of this bill entitles facilities licensed to provide home and community care to conduct criminal background checks on applicants for employment, employees of businesses that contract with the facility, volunteers and students who are at the facility for educational purposes using the DPS non-public criminal records database.

**Impact:** This bill may assist UT System institutions to conduct background checks on students coming to their facilities for educational purposes. The System's model policies on student criminal background checks should be reviewed to determine if amendments are needed. Institutions should review their student criminal background check processes to determine whether the use of the TxDPS database should be incorporated for this group of students.

**Effective:** June 14, 2013

Barbara Holthaus

[HB 1272](#) by Thompson, et al. and Van de Putte

Relating to the continuation and duties of the Human Trafficking Prevention Task Force.

HB 1272 continues the Human Trafficking Prevention Task Force and requires it to work with the Texas Education Agency and the Health and Human Services Commission to develop a list of key indicators that a person is a victim of human trafficking and to develop a standardized training curriculum and train doctors, nurses, EMS personnel, teachers, school counselors and administrators in victim identification. The Department of Family and Protective Services and the Health and Human services Commission are also required to train their personnel in methods of identifying children in foster care who may be at risk for becoming victims of human trafficking and to develop a referral process for identified victims and individuals at risk of becoming victims.

**Impact:** UT System institutions' doctors, nurses and EMS personnel are required to be trained in the standard curriculum on identifying victims of human trafficking. It is not clear whether "teachers, counselors and administrators" would include non-medical personnel for training purposes.

**Effective:** June 14, 2013

Allene Evans

[HB 2099](#) by Guillen and Hinojosa

Relating to improving access to nursing education programs.

This bill addresses two areas designed to improve access to nursing education programs:

- Common Application Form: The bill authorizes the Higher Education Coordinating Board to determine whether an electronic common admission application form for undergraduate nursing programs at institutions of higher education would be cost-effective and if so, to adopt such form. Similar authority relates to adoption of an electronic common admission application form for transferees to an undergraduate nursing education program. Such determinations of cost-effectiveness must be made by September 1, 2014.
- Nursing Faculty Loan Repayment Assistance Program: The bill mandates that the Higher Education Coordinating Board establish and administer a loan repayment assistance program for nurses serving on the faculties of nursing degree programs at institutions of higher education in a position that requires an advanced professional nursing degree. In order to be eligible for this program, a nurse must: 1) apply to the board; 2) be employed full-time for at least one year as, and be currently employed full-time as, a faculty member of a nursing degree program at an institution of higher education or a private or independent institution of higher education; and 3) comply with any additional requirements adopted by board rule. Loan repayment assistance is available for each year of full-time employment, not to exceed five years and may not exceed \$7,000 per year. Assistance is not available for a student loan that is in default. Funding for this program is provided from excess funds in the physician education loan repayment account as well as gifts and grant; if funds reallocated to the nursing faculty loan repayment assistance program from the physician account are unused, the funds are treated as though they were not reallocated. A copy of the rules and other pertinent information regarding this program must be distributed to each institution of higher education and private or independent institution of higher education, any appropriate state agency, and any appropriate professional association. Rules must be adopted by December 1, 2013.

**Impact:** If the Higher Education Coordinating Board decides that an electronic common admission application form is cost-effective, it will affect the admission process and materials used at all of the nursing schools operated by UT and will require modification to catalogues and websites. The loan repayment assistance program will affect recruitment and retention of nursing faculty.

**Effective:** September 1, 2013

Melodie Krane

[HB 2550](#) by Patrick and Zaffirini

Relating to the consolidation of the Higher Education Enrollment Assistance Program and the Higher Education Assistance Plan and the transfer of certain enrollment assistance duties to institutions of higher education and to measures to enhance medical education.

HB 2550 requires the institution of higher education closest in geographic proximity to a public high school that is substantially below the state average in the number of their graduates who enroll in higher education to enter into an agreement with that high school to develop a plan to increase the number of students from that high school enrolling in higher education. This bill specifies the requirements of the plan which include providing enrollment information and assistance, targeting enrollment efforts to increase the number of Hispanic students and African American male students, and engaging with school districts to provide access to rigorous, high-quality dual credit opportunities. The plan and the results of the plan must be included in the institution's annual report to the Texas Higher Education Coordinating Board (THECB). The THECB is authorized to adopt rules to implement the section.

The bill also requires that the Texas Higher Education Coordinating Board (THECB) administer the Resident Physician Expansion Grant Program. The grant program includes grants to encourage the creation of new graduate medical education programs, additional first year residency positions, and innovative programs designed to increase the number of primary care physicians in the state.

**Impact:** HB 2550 impacts UT System institutions that are closest in geographic proximity to a public high school that is substantially below the state average in the number of their graduates who enroll in higher education. These institutions are required to provide to prospective students from these high schools information related to enrollment in an institution of higher education, including one that is private or independent. These institutions are also required to assist prospective students in completing admissions and financial aid applications, and fulfilling testing requirements. This bill impacts these institutions of higher education to the extent that they may need to increase the number of staff in order to provide the required information and assistance to students. The bill also impacts these UT System institutions because it requires additional information on reports to the coordinating board. The bill also impacts UT System institution graduate medical education programs because it provides the opportunity for new grant programs. UT System institutions with such programs should review new grant opportunities and application requirements as set forth in THECB to determine whether to pursue available grants.

**Effective:** September 1, 2013

Priscilla Lozano

[HB 3662](#) by Clardy, et al. and Seliger

Relating to Relating to the Texas Workforce Innovation Needs Program; authorizing a fee.

HB 3662 establishes the Texas Workforce Innovation Needs Program to provide selected school districts, public institutions of higher education and private or independent institutions of higher education with the opportunity to establish innovative programs designed to prepare students for careers for which there is demand in this state; and use the results of those programs to inform the governor, legislature, and commissioner concerning methods for transforming public and higher education in this state by improving student learning and career preparedness.

In order to participate in the program, a school district or institution of higher education must apply and use a prescribed form established by a rule from the commissioner of education. The application process requires each applicant to submit a detailed plan of the instruction and accountability the applicant would provide under the program. The plan must, to the greatest extent appropriate for the grade or higher education levels served under the program:

- be designed to support improved instruction of and learning by students and provide evidence of the accurate assessment of the quality of learning on campus;
- describe any waiver of an applicable prohibition, requirement, or restriction for which the district or institution of higher education intends to apply; and
- include any other information required by commissioner rule.

In addition to the foregoing requirements, HB 3662 requires the plan to either focus on engagement of students in competency-based learning as necessary to earn postsecondary credentials, including career and technical certificates; associate's degrees; bachelor's degrees; and graduate degrees; or incorporate career and technical courses into dual enrollment courses or into the early college education program under Texas Education Code Section 29.908 to provide students the opportunity to earn a career or technical certificate or associate's degree.

Of those school districts or institutions of higher education who apply, the commissioner is required to select those applicant school districts and institutions of higher education that present the plans that are most likely to be effective in producing the next generation of higher performing public schools and institutions of higher education that provide education and training in an innovative form and manner to prepare students for careers for which there is demand in this state.

HB 3662 also requires the commissioner to convene program leaders periodically to discuss methods to transform learning opportunities for all students, build cross-institution support systems and training, and share best practices tools and processes.

HB 3662 authorizes a school district or institution of higher education participating in the program or the commissioner to accept gifts, grants, or donations from any source,

including a private or governmental entity. In addition, in order to cover the costs of administering the program, the commissioner may charge a fee to a school district or institution of higher education participating in the program.

In consultation with interested school districts, institutions of higher education, and other appropriate interested persons, HB 3662 requires the commissioner to adopt rules as necessary for purposes of this newly created program.

HB 3662 also requires that not later than December 1, 2014, and not later than December 1, 2016, with the assistance of school districts and institutions of higher education participating in the program, the commissioner shall submit to the governor and the legislature reports concerning the performance and progress of the program participants. The report, submitted not later than December 1, 2014, must include any recommendation by the commissioner concerning legislative authorization necessary for the commissioner to waive a prohibition, requirement, or restriction that applies to a program participant and other school district or institution of higher education interested in beginning a similar program. To prepare for implementation of a commissioner waiver, the commissioner must seek any necessary federal waiver. This subsection of the HB 3662 would expire January 1, 2020.

**Impact:** This bill impacts UT System academic institutions to the extent any apply to participate in the Texas Workforce Innovation Needs Program or are consulted by the Commissioner for Education for input to assist with the drafting of rules related to this program.

**Effective:** June 10, 2013

Melissa V. Garcia

[HJR 79](#) by Branch, et al. and Birdwell

Regarding a joint resolution proposing a constitutional amendment to eliminate an obsolete requirement for a State Medical Education Board and a State Medical Education Fund.

HJR 79 is a constitutional amendment to be included on the November 5, 2013 ballot, and if it passes it would eliminate the State Medical Education Board and the State Medical Education Fund.

**Impact:** None. No new loans have been made by the State Medical Board in more than 25 years, and it currently has no appointees and receives no program funding. Neither the State Medical Education Board nor the State Medical Education Fund is in operation.

**Effective:** September 1, 2013

Chuck Johnstone

[SB 24](#) by Hinojosa, et al. and Oliveira, et al.

Relating to the creation of a new university in south Texas within The University of Texas System.

This bill establishes a general academic teaching institution in south Texas within the UT System that includes:

- in Cameron County, an academic campus with other academic operations;
- in Hidalgo County, an academic campus with other academic operations;
- in Starr County, an academic center;
- a medical school and other programs in south Texas as previously authorized by the 81st Legislature; and,
- the Lower Rio Grande Valley Academic Health Center (RACH) facilities and operations previously authorized.

The UT System Board of Regents (BOR) is authorized to organize, administer, locate and name the new institution, its colleges, schools, and other institutions. The BOR shall make rules and regulations as necessary to establish a university of the first class. The primary facilities and operations of the university must be equitably allocated among Cameron, Hidalgo, and Starr counties. The programs of the medical school component are to be conducted throughout the region with a substantial presence in Hidalgo and Cameron County while providing interdisciplinary education across health professions. The BOR may solicit and accept gifts and grants on behalf of the university.

The BOR may prescribe courses leading to degrees and may award degrees, including: bachelor's, master's and doctoral degrees and their equivalents as well as medical school degrees and other health science degrees. Such degree programs require approval of the Higher Education Coordinating Board. Courses may include any course or program previously authorized for UT Pan American or UT Brownsville. Joint faculty appointments are authorized.

The university is entitled to participate in the Permanent University Fund to the same extent as similar institutions of the UT System.

The Center for Border Economic and Enterprise Development and The Texas Academy of Mathematics and Science, existing programs at UT Pan American and UT Brownsville, are continued under the new university.

#### The University of Texas Health Science Center—South Texas

A medical school is part of the health science center. The administrative offices of the health science center are to be located in Hidalgo and Cameron counties with the offices overseeing undergraduate medical education located in Hidalgo County and the offices

overseeing graduate medical education in Cameron County. Educational programs for first and second year medical students will be primarily in Hidalgo County while educational programs for third and fourth year medical students will be primarily in Cameron County. Educational programs are to take advantage of existing educational facilities and programs.

UT Pan American and UT Brownsville.

UT Pan American and UT Brownsville are abolished upon action by the BOR, the effective date of which cannot be earlier than the date upon which the new south Texas university begins operation. The BOR retains all powers and duties related to the abolished institutions. Employment of faculty and staff of the abolished universities is to be facilitated by the BOR while students of the abolished universities are entitled to admission to the new south Texas university. The partnership between UT Brownsville and Texas Southmost College shall continue until August 31, 2015 to the extent necessary to ensure accreditation.

**Impact:** The development, coordination, administration and management of a new university, particularly one including a medical school, are a significant undertaking that will impact the UT System and south Texas for many years. The BOR, System Administration staff and staff of the new south Texas university will be involved in every aspect of this new development.

**Effective:** June 14, 2013

Melodie Krane

[SB 141](#) by Huffman and Davis, Sarah

Relating to the requirements for issuance of a license to practice orthotics and prosthetics.

SB 141 amends Sections 605.252 (License Eligibility) and 605.258 (Student Registration Certificate) of the Texas Occupations Code to bring them into compliance with the current national standards for the education of orthotists and prosthetists by including a graduate degree as a requirement for licensure. SB 141 also:

- Requires applicants complete a professional clinical residency that meets the requirements established by rule by the Texas Board of Orthotics and Prosthetics (Board), allowing for the possibility of using the 18-month combined residency training program now authorized by national standards;
- Allows graduate students who are currently enrolled in a graduate program to participate in a clinical residency program while still in school as long as the program certifies in writing that the student has successfully completed his or her academic prerequisites;
- Makes application of this Act prospective to January 1, 2014; and

- Requires the Board to adopt rules to implement the changes in law not later than December 1, 2013.

**Impact:** UT System health institutions offering orthotic and prosthetics residency programs must modify their programs to the extent required for compliance.

**Effective:** June 14, 2013

Allene Evans

[SB 215](#) by Birdwell, et al. and Anchia

Relating the continuation and functions of the Texas Higher Education Coordinating Board, including related changes to the status and functions of the Texas Guaranteed Student Loan Corporation.

SB 215 makes numerous changes to the Texas Higher Education Coordinating Board (THECB) functions and programs that include the following relevant to university systems and institutions of higher education:

- The bill redefines the Board's powers and duties to reflect the major functions of a higher education coordinating entity and provides that the THECB has only the powers provided by law, reserving the governance of institutions to their governing boards. The bill adds the requirement for the THECB to develop a long-range master plan that will require the board to re-evaluate the role and mission of each general academic teaching institution. The role of the THECB in establishing best practices and pilot programs is redefined and provides limitations when establishing such programs. The bill requires the THECB to administer a pilot program at selected institutions no later than January 1, 2014 to ensure that students are informed consumers with regard to student financial aid.
- SB 215 requires the Board to establish a policy on an agency-wide risk-based compliance monitoring function for ensuring: (1) that funds allocated by the THECB to the institution are distributed in accordance with law and rule; and (2) that data reported by institutions to the THECB and used for funding or policymaking decisions is correct. Factors in developing the policy and provisions on conducting the review (ex: partnering with institution's audit department; announced or un-announced visits) are included in the bill, as are notification procedures when the THECB determines through the compliance monitoring process that funds were misused or misallocated by an institution, or if there were errors in formula funding. Any final determination is reported to the institution's governing board and in determinations of formula funding errors, revisions to the appropriated amount would be calculated and reported to the governor, LBB, and comptroller.
- SB 215 requires the THECB to engage in negotiated rulemaking with university systems and institutions to identify unnecessary requests for information to

eliminate them or ways to streamline the requests. The THECB is also required to engage affected institutions in negotiated rulemaking processes when adopting a policy, procedure, or rule relating to admissions policies, the allocation or distribution of funds (including financial aid or other trusteed programs), certain data requests, its new compliance monitoring function, and standards to guide the board's review of new construction and the repair and rehabilitation of buildings and facilities. The THECB is also to establish methods for obtaining input from stakeholders and the general public when developing the long range master plan, implement policies to provide opportunities for public comment at each board meeting, and adopt policies for forming advisory committees.

- The bill amends the process for THECB approval of new degrees or certificate programs and provides new criteria used for the program review. The bill includes new provisions pertaining to consolidation or elimination of degree or certificate programs and allowing off-campus courses for credit within the state or distance learning courses.
- The bill changes the THECB responsibility in reviewing and approving new construction and repair and rehabilitation projects, limiting their duties and requiring the THECB to adopt standards to guide their review.
- SB 215 amends various provisions within the TEXAS Grant program, limiting eligibility to those students enrolled in a baccalaureate degree program and removing 2-year colleges from eligibility for TEXAS grant funding. The bill also requires the THECB to allocate the TEXAS grant funding “proportionally” among the remaining eligible institutions.
- SB 215 amends provisions within the Texas B-On-Time program. The changes limit the program to students earning baccalaureate degrees and limits eligibility to general academic teaching institutions except for state colleges, medical and dental units offering baccalaureate degrees, or private or independent institutions of higher education that offer baccalaureate degree programs. The bill also requires that the THECB, in collaboration with eligible entities, adopt and implement measures to improve participation in the program and improve the rate of student satisfaction of the program terms. Institutions with a loan forgiveness rate of less than 50% statewide or whose default exceeds the statewide average will be required to give training to all loan recipients enrolled at their institution.
- As to student loans, the bill converts the Texas Guaranteed Student Loan Corporation from a public nonprofit corporation to a nonprofit corporation under Chapter 22 of the Business Organization Code. The bill also changes the venue to Travis County in default suits for student loans authorized by Education Code Chapter 52.
- The bill amends various provisions within the Norman Hackerman Advanced Research Program, including administration of the program by the THECB. The Research University Development Fund provisions have also been modified: the

bill changes the name of the fund to the Texas Competitive Knowledge Fund and changes the eligibility factors and funding.

- This bill requires that additional information and certification be provided by a governing board in its annual report to the THECB of each institution's list of courses. The bill also requires institutions to annually report to the governing board of the institution information regarding the condition of the buildings and facilities of the institution, including information concerning deferred maintenance with respect to those buildings and facilities as defined by the THECB.

**Impact:** The bill directly impacts UT System and its institutions since it makes significant changes in the authority of the THECB, resulting in numerous modifications to programs administered by the board. Of greatest importance, the THECB will be required to adopt a number of rules affecting the institutions in which the UT System and its institutions, through rulemaking or statutory directive, will be directly involved, the bill requires that a new compliance monitoring program be established through rulemaking and requires further information and certification by the Board of Regents in its annual list of courses and an annual report to the Board of Regents regarding the condition of its buildings and facilities.

**Effective:** September 1, 2013

Helen Bright

[SB 566](#) by Eltife, et al. and Clardy

Relating to the establishment of a pharmacy school at The University of Texas at Tyler.

SB 566 allows The University of Texas System Board of Regents to establish a pharmacy school at The University of Texas at Tyler. The Board of Regents are also allowed to prescribe courses leading to customary degrees offered at other leading American schools of pharmacy and may award those degrees.

The Board of Regents would support the operations and capital expenses through tuition, gifts, grants, and other institutional or system funds.

The pharmacy school would not be eligible for state funding under the formula funding system.

**Impact:** This directly impacts The University of Texas at Tyler.

**Effective:** June 14, 2013

Melissa V. Garcia

**SB 1159** by Van de Putte and Patrick, Diane

Relating to higher education for certain military personnel and their dependents.

SB 1159 requires graduate and professional programs to grant re-admission or re-enrollment to any veteran who was initially offered admission but could not enroll or had to withdraw due to deployment as a member of the US armed forces serving on active duty, for the purpose of engaging in a combative military operation outside the United States. Additionally, the program must grant credit for any course work previously completed under the program and accept standardized test scores previously submitted for admission to the program. These requirements apply regardless of the time since the person was initially offered admission or withdrew.

SB 1159 also directs the Legislative Budget Board (LBB), with support from the Veterans Commission and the Coordinating Board, to study and evaluate the tuition and fee Hazelwood exemption (Section 54.341, Texas Education Code). Among other areas, the study must assess demographics of the recipients, degree attempted and awarded, credit hours, GPA, graduation rates, use of federal benefits, and costs. Institutions of higher education must cooperate with the LBB in providing requested data. A report of the study with recommendations must be submitted to key state officials by December 1, 2014.

**Impact:** Graduate and professional programs should be made aware of this new requirement of automatic re-admission, course credit and test scores of certain deployed military personnel. Additionally, programs may need to assess whether additional resources will be needed to assist students upon re-admissions to be academically successful.

**Effective:** June 14, 2013

Esther L. Hajdar

**SB 1210** by Zaffirini and Branch

Relating to conditions on the receipt of tuition and fee exemptions and waivers at public institutions of higher education.

SB 1210 sets forth standards that a student must meet in order to continue to receive a tuition or fee waiver or exemption in subsequent semesters. The graduate or undergraduate student must maintain the institution's grade point average requirement for making satisfactory academic progress toward a degree or certificate, in accordance with the institution's policy regarding eligibility for financial aid. Undergraduate students, to remain eligible, also may not have an excessive number of semester credit hours under Section 54.014 (30 sch or more than degree plan), unless the institution determines there is good cause. In calculating excess credit hours, the following are not included: hours earned exclusively by examination; dual credit hours; and developmental coursework hours that an institution required the person to take under Success Initiative.

If a student fails to meet the requirements for continued eligibility, he or she is not eligible for the exemption for the following semester but can become re-eligible if the student meets the eligibility criteria above again.

Institutions must adopt a policy to allow a student who fails to maintain the required grade point average to continue receiving the exemption or waiver in any semester or term on a showing of hardship or other good cause, such as severe illness, care for another, or military service. Institutions must maintain documentation of any good cause exception granted.

If other statutes provide standards for continued receipt of an exemption, the stricter standard applies.

Additionally, the requirements in this bill do not apply to tuition or fee exemptions or waivers given to:

- High school students enrolled in dual credit courses;
- Spouses or children of veterans who were killed in action, who died while in service, who are missing in action, or whose death is documented to be directly caused by illness or injury connected with the veteran's service (paras. (A)-(D) of subsections 54.341(a-2) and (b));
- Texas residents who were prisoners of war (Sec 54.342);
- Certain students who were under the Conservatorship of the Department of Family and Protective Services (Sec. 54.366); and
- Nonresident students who are eligible to pay Texas resident rates under state law.

Finally, SB 1210 clarifies that any tuition or fee exemption or waiver only applies to formula-funded courses.

These provisions apply to a person's eligibility for an exemption or waiver from the payment of all or part of tuition or other fees beginning with tuition and fees charged for the 2014 fall semester.

**Impact:** SB 1210 encourages students to maintain satisfactory academic performance and encourages timely completion of degrees, in order to continue receiving tuition and fees exemptions and waivers. Financial aid offices should be made aware of these new requirements and adopt procedures to ensure compliance with the bill's requirements. Additionally, institutions must adopt a policy and procedures to address whether hardship or good cause exists, if a student fails to meet eligibility standards for continued receipt of an exemption or waiver.

**Effective:** June 14, 2013

Esther L. Hajdar

## Health Professions

[HB 581](#) by Howard, et al. and Lucio

Relating to the waiver of sovereign immunity in certain employment lawsuits by nurses.

By waiving sovereign immunity from suit and liability for hospitals operated by or on behalf of a state or local governmental entity, this bill would permit publicly employed nurses to bring a lawsuit in state court for damages for retaliation for certain advocacy actions, including making a good faith report regarding patient care concerns, requesting a nursing peer review, refusing to engage in certain conduct or advising a nurse of their rights under the law.

In order to bring such a suit relating to patient care concerns, the nurse must:

- make the report in writing (including electronically) or verbally, if authorized by the employer or entity where the nurse practices;
- make the report to the nurse's supervisor, a committee authorized under state or federal law to receive this report or to an individual or committee authorized by the nurse's employer or another entity where the nurse practices; and
- make the report not later than the 5<sup>th</sup> day after the nurse became aware of the situation if it is a single incident or the 5<sup>th</sup> day after the nurse became aware of the most recent occurrence if the situation involves multiple incidents or a pattern of behavior.

A lawsuit against a state governmental entity shall be in Travis County district court or a county in which all or part of the acts or omissions giving rise to the cause of action occurred. For local governmental entities, suit must be brought in a district court in a county in which all or part of the entity is located.

Provisions of the state whistleblower statute are made applicable with regard to the type of relief available and amount of damages available, time in which relief must be sought and the requirement of using the grievance or appeal procedures before suing.

The relief granted by the bill is in addition to other state or federal law remedies available to a public employee.

**Impact:** Since this bill applies to state and local hospitals, including both general and special hospitals, and mental hospitals, the provisions of this bill will apply to UT hospitals and institutions that employ nurses.

**Effective:** September 1, 2013

Melodie Krane

[HB 588](#) by Craddick and Uresti

Relating to the regulation of the practice of physical therapy; authorizing fees.

This bill adds a provision to the Occupations Code such that the home phone number and address of licensed physical therapists, physical therapist assistants, and the owners or managers of registered physical therapy facilities are confidential and not subject to disclosure under Chapter 552 of the Texas Government Code only as maintained by Texas Board of Physical Therapy Examiners (Board) or the Executive Council of Physical Therapy and Occupational Therapy Examiners (Executive Council). However, the business address or address of record provided to the Texas Board of Physical Therapy Examiners (board) is public.

This provision also changes the renewal and reinstatement process for physical therapists and physical therapist assistants whose licenses have expired. For those who have licenses that have been expired for less than 90 days can renew their licenses by paying a renewal fee as well as late fee to the Executive Council of Physical Therapy and Occupational Therapy Examiners (executive council). For those who have licenses that have been expired for more than 90 days, the license may be reinstated by the payment of a reinstatement fee as well as by complying with the board's requirements for reinstatement. By December 1, 2013 the board and executive council are required to adopt rules and fees necessary to implement the provisions regarding renewal and reinstatement. The new renewal provisions apply only to licenses that expire on or after December 1, 2013.

**Impact:** To the extent that UT System and its institutions have physical therapists and physical therapist assistants on staff, this bill does not change anything with regard to the public disclosure of their home addresses and home phone numbers, as this bill only impacts such information as maintained by the Board and Executive Council. UT System and institutions must withhold such information only if the individuals timely elected to keep this information private per Section 552.024 of the Government Code. The renewal and reinstatement provisions will be relevant and important to those physical therapists and physical therapist assistants on staff at UT institutions.

**Effective:** September 1, 2013

Neera Chatterjee

[HB 705](#) by Howard, et al. and Schwertner

Relating to the definition of emergency services personnel for purposes of the enhanced penalty prescribed for an assault committed against a person providing services in that capacity.

HB 705 provides additional protection to emergency room personnel including volunteers by heightening the penalty for assault of emergency room personnel. The assault of emergency room personnel providing emergency services by a patient who knows an

individual to be emergency room personnel is raised from a class A misdemeanor to a third degree felony.

**Impact:** UT System institutions employing physicians, residents, nurses, and other health care providers providing care in emergency room settings should be aware of the of the heightened protections for assault provided by HB 705.

**Effective:** September 1, 2013

Tim Boughal

[HB 798](#) by Thompson and Garcia

Relating to certain actions taken by certain licensing authorities regarding a license holder or applicant who has been convicted of a Class C misdemeanor.

HB 798 amends Section 53.021 of the Occupations Code by adding an exemption of Class C misdemeanors from those offenses for which a person may have their occupational license suspended or revoked, or be denied a license. This part of the Occupations Code does not cover licenses for law enforcement services, public health, education, or safety services, or certain financial services.

**Impact:** UT System institutions with teaching programs that can lead to licenses covered by the law should be informed of this change and should inform potential students entering those programs.

**Effective:** September 1, 2013

Dan Sharphorn

[HB 807](#) by Zerwas and Schwertner

Relating to the practice of psychology by persons employed by a governmental agency.

Psychologists employed by governmental agencies of the State of Texas have previously remained exempt from oversight by the Texas State Board of Examiners of Psychologists (TSBEP). HB 807 removes the exemption, requiring psychologists employed by governmental agencies to comply with the initial and continuing licensure, oversight, continuing education, disciplinary, and compliance requirements of the TSBEP. However, psychologists employed by regionally accredited institutions of higher education remain exempt from the oversight by the TSBEP.

HB 807 requires previously exempt psychologists employed by governmental agencies which are not regionally accredited institutions of higher education to comply with all rules and regulations promulgated by the TSBEP including examination, maintaining licensure, complaints and investigations, continuing education, potential disciplinary action, and advertising restrictions.

HB 807 requires that governmental agencies cooperate with investigations and requests for information regarding licensees by the TSBEP.

HB 807 further requires physicians, psychologists, and other professionals licensed and certified by the Department of State Health Services to perform determinations of mental retardation upon written application to the provider.

**Impact:** Psychologists employed by UT System institutions which are not regionally accredited institutions of higher learning are required to comply with all rules and regulations of the TSBEP including examination, maintaining licensure, complaints and investigations, continuing education, potential disciplinary action, and advertising restrictions. UT System institutions are required to cooperate with investigations and requests for information from the TSBEP. Additionally, psychologists and physicians are required to perform determinations of mental retardation upon written application to the provider.

**Effective:** June 14, 2013

Tim Boughal

[HB 808](#) by Zerwas and Deuell

Relating to the authority of a psychologist to delegate the provision of certain care to a person under the psychologist's supervision, including a person training to become a psychologist.

A licensed psychologist may delegate psychological testing and similar services if a reasonable and prudent psychologist would agree, to a provisionally licensed psychologist (a person with university awarded doctoral degree in psychology) or a newly licensed psychologist, provided that person is under the licensed psychologist's supervision. Insurance companies are required to reimburse the provider for those services.

**Impact:** Licensed psychologists can now be reimbursed by insurance companies for psychological testing and related services rendered by provisionally licensed psychologists and newly licensed psychologists under their supervision.

**Effective:** September 1, 2013

Chuck Johnstone

[HB 1491](#) by Branch and Schwertner

Relating to the temporary licensing of a dentist who performs voluntary charity care.

HB 1491 provides for the Texas State Board of Dental Examiners (TSBDE) to implement rules creating a temporary license for dentists to provide voluntary charity care. The bill requires the TSBDE to issue a temporary license to provide voluntary charity care for a dentist who is licensed in another state or has ceased practicing within 2 years in a

different state which has licensing requirements substantially similar to this state, and remains in good standing.

A temporary license under HB 1491 is limited to the practice of voluntary charity care in the geographic area specified by the license for the limited period of time specified by the license. All TSBDE disciplinary rules remain for dentists receiving temporary licensure.

The TSBDE will adopt rules to allow temporary licensure by January 1, 2014.

**Impact:** UT System institutions should be aware of the opportunity for out of state dentists to gain temporary licensure to provide voluntary charity care.

**Effective:** June 14, 2013

Tim Boughal

[HB 2645](#) by Turner and Ellis

Relating to certification and operation of independent review organizations.

HB 2645 amends the provisions governing the review and certification of independent review organizations (IROs). The bill requires IROs to be incorporated in the state of Texas, maintain a physical address and mailing address, be in good standing with the comptroller, be certified under the Texas Insurance Code, additional disclosure of descriptions of any relationship between applicants and a health benefit plan, HMO, insurer, utilization review agent, nonprofit health corporation, payor, health care provider, or group representing any listed entity. IROs are required to describe the procedures used by the applicant to verify physician credentials, including computer processes, electronic databases, and records, as well as the software used for managing the processes, databases, and records in an application for certification.

The officers of an IRO are required to submit a complete set of fingerprints to be used to conduct a criminal history check including searches of the FBI, DPS, and other criminal justice agencies. The bill requires IROs applying for certification solely for worker's compensation reviews certified by an association to provide evidence of the certification and all information submitted to achieve the certification.

HB 2645 directs the TDI to adopt standards requiring that the officer of an IRO attest that the office has a physical address in the state applying for certification, that the office be equipped with a computer system capable of processing requests and accessing all electronic records related to the review, that all records be maintained electronically, and, in case of an office located in a residence, that the office be set aside in a room for business purposes. Recertification is required biennially.

Under HB 2645 IRO's are required to make a determination for a life threatening condition by the fifth day after the IRO receives information necessary to make the determination, or the fourth day for a review of services other than workers' compensation medical benefits.

**Impact:** UT System institutions which operate or participate in IROs should be aware of the certification, renewal, and determination requirements applicable to IROs.

**Effective:** September 1, 2013

Tim Boughal

[HB 3201](#) by Kolkhorst and Nelson

Relating to the practice of dentistry.

HB 3201 changes the procedure for licensure, as well as investigation and review of dental complaints. HB 3201 imposes a \$55 surcharge for the first registration permit and renewal of a registration permit to be placed in the Texas State Board of Dental Examiners' (TSBDE) public assurance account in order to pay for the enforcement program. Licensed dentists are required to be notified of investigations and complaints in writing by the TSBDE within 60 days of receipt.

HB 3201 confers the ability upon the TSBDE to delegate the authority to its employees to issue licenses for individuals clearly meeting licensure requirements and requires that applicants not clearly meeting the requirements be returned to the TSBDE. The TSBDE may delegate to a committee composed of its employees the authority to dismiss or enter into agreed settlement of complaints not directly related to patient care or involving solely administrative violations. However, complaints are required to be referred for informal proceedings in instances where the committee determines a dismissal or settlement is not appropriate, no agreed settlement can be reached, or the licensee requests referral to informal proceedings.

The TSBDE is required to complete a preliminary investigation of a complaint within 45 days of receipt (currently no time period is specified) with the first determination of whether the licensee constitutes a continuing threat to the public welfare. The bill requires that upon completion of the preliminary investigation, the TSBDE determine whether to officially proceed on the complaint. The bill provides that if the preliminary investigation is not completed within 45 days, the investigation automatically becomes an official investigation.

HB 3201 directs the TSBDE to appoint an expert dentist panel of licensed Texas dentists to act as expert reviewers and assist in providing opinions relating to medical competency. The TSBDE is required to promulgate rules governing the expert dentist panel, including rules regarding qualifications for membership, time periods for service, grounds for removal from the panel, avoidance of conflicts of interest including geographical area conflicts, and duties of the panel.

HB 3201 requires that initial reviews indicating a standard of care issue be referred to the expert dentist panel for review by specialists in the same or similar area of practice. A written report of the panel's determinations specifying the standard of care, fact basis of the complaint, and clinical basis for the panel's conclusions is required. The dentist initially selected to review a complaint shall determine whether the standard of care was

violated and issue a preliminary report for review by a second panel member. If the second panel member does not agree with the initial report, a third expert dentist reviewer will review the initial report and the differences to determine the conclusions and issue a final written report. The reviewers are allowed to communicate with the other reviewing panel members during review.

Under HB 3201, the TSBDE must provide at least 45 days notice of the date, time, and location of an informal settlement conference, as well as a description of the nature of the allegations. Rebuttals are required to be provided to the board at least 15 days prior to any conference pursuant to the bill.

The TSBDE may issue remedial plans to resolve the investigation of a complaint. However, a remedial plan may not be issued to resolve a death of a patient, commission of a felony, a matter involving inappropriate sexual behavior, or in an instance in where the resolution may limit the practice of dentistry by the licensee. However a remedial plan that contains a provision limiting, revoking, suspending, or restricting a person's practice of dentistry, or assessing an administrative penalty against a person is prohibited.

The TSBDE is required to promulgate rules governing the licensure, complaint, investigation, and

**Impact:** Dentists and dental students at UT System institutions operate within the proper confines of the Dental Practice Act, therefore the bill's only direct effect will be subject the \$55 surcharge for initial licensure and renewals. To the extent that complaints may be lodged against any dentist or dental student at a UT System institution, the bill provides additional clarity in the informal investigation and resolution process to resolve complaints. The institution of time periods for investigation and notice of informal settlement conferences provides additional clarity as well as a set time for the response to any complaint which may be filed against a licensed dentist.

**Effective:** Bill takes effect on January 1, 2014 but Sections 1, 4, and 10 Take effect on September 1, 2013.

Tim Boughal

[HB 3285](#) by Davis, Yvonne and Nelson

Relating to the reporting of health care associated infections.

This bill amends the Health and Safety Code relating to required reports by hospitals of hospital infections. In addition to information already required to be reported, the bill requires hospitals to report whether the infection resulted in the death of the patient while hospitalized. This change affects a reporting period beginning on or after March 1, 2014. Similarly, summary information compiled and published by the Department of State Health Services (DSHS) regarding health care facilities must also now include whether the patient's death resulted from the infection while hospitalized.

**Impact:** Currently a hospital operated by the state that provides surgical or obstetrical services is required to report information to DSHS about hospital infections; ambulatory surgical centers are also required to file such reports. UT hospitals and ambulatory surgical centers that are currently required to report to DSHS regarding hospital infections will need to include information about whether the infection resulted in the death of the patient while hospitalized.

**Effective:** September 1, 2013

Melodie Krane

**SB 61** by Nelson and Cortez

Relating to the licensing and regulation of military physicians who provide voluntary charity health care.

SB 61 directs the Texas Medical Board (TMB) to adopt rules allowing for the issuance of a limited military volunteer medical license. The TMB is required to adopt rules allowing current or former members of the military licensed or retired in good standing in another state, or able to treat members of the military, to receive a volunteer military medical license. Physicians are limited to providing care under a volunteer military license only at a clinic primarily serving indigent patients. Physicians practicing under a limited volunteer license are prohibited from receiving compensation for any work at the clinic.

Physicians under active investigation, convicted of a felony or crime involving moral turpitude, or who have been disciplined in any other jurisdiction, are prohibited from licensure. Physicians licensed under this bill are required to comply with all existing board rules regarding licensure renewal, continuing medical education, and discipline.

**Impact:** UT System institutions should be aware of the availability of a limited volunteer license for military physicians providing indigent medical care.

**Effective:** September 1, 2013

Tim Boughal

**SB 336** by Rodriguez and Moody

Relating to the qualifications for appointment as a medical examiner.

SB 336 expands the list of persons who may be appointed as a medical examiner. The bill allows the county commissioners' court to consider a physician licensed in good standing in another state who has applied for licensure by the Texas Medical Board and been granted a provisional license, in addition to a physician licensed by the Texas Medical Board in appointing a medical examiner.

SB 336 allows the county commissioners' court to broaden its consideration of potential medical examiners beyond solely individuals licensed to practice in Texas to include

physicians who are licensed in good standing in another state and have applied for licensure with the Texas Medical Board.

**Impact:** UT System institutions which possess or participate in contracts from the county commissioners' court to provide medical examiner's services should be aware of the ability to consider physicians licensed in another state who have applied for licensure with the Texas Medical Board and received a provisional license.

**Effective:** September 1, 2013

Tim Boughal

**SB 404** by Schwertner and Davis

Relating to complaints filed with the Texas State Board of Pharmacy; authorizing fees.

SB 404 makes several changes to the powers of the Texas State Board of Pharmacy (Board) with respect to its complaint process:

- the Board is required to maintain a complainant's identity regarding a complaint;
- the Board is prohibited from acting on a complaint involving an allegation seven years prior or greater;
- the Board is required to establish procedural rules for informal disciplinary proceedings; and
- the Board is authorized to promulgate remedial plans to resolve complaints provided the complaint does not involve death, hospitalization, felonious conduct, restriction of licensee's pharmacy practice, or where a previous unrelated remedial plan was given within the preceding 24 months.

**Impact:** This legislation will impact pharmacists by requiring the Texas State Board of Pharmacy to develop procedures related to remedial plans to resolve certain complaints and to establish rules for informal disciplinary proceedings.

**Effective:** September 1, 2013

Chuck Johnstone

**SB 406** by Nelson and Kohlkorst, et al.

Relating to the practice of advanced practice registered nurses and physician assistants and the delegation of prescriptive authority by physicians to and the supervision by physicians of certain advanced practice registered nurses and physician assistants.

SB 406 allows physicians in appropriate circumstances to delegate additional prescriptive authority to advanced practice registered nurses (APRNs) and physician assistants (PAs)

with appropriate supervision. Specifically, the bill provides that physicians may enter into prescriptive authority agreements with APRNs and PAs allowing them prescribe and order drugs or devices. Delegation of prescriptive authority is limited to class III, IV, or V controlled substances, non-prescription drugs, and dangerous drugs in clinical settings. Delegation in hospital settings where the expected stay of the patient is greater than 24 hours is limited and class II, III, IV, or V controlled substances, non-prescription drugs, and dangerous drugs.

Delegation of prescriptive authority is limited of a combined seven full time equivalences (FTE) of APRNs and PAs. SB 406 allows the Texas Medical Board to adopt other rules relating to physician delegations. A physician must supervise at least as many PAs as he/she has delegated prescriptive authority to in a practice setting. The bill requires the Texas Medical Board, Texas Board of Nursing, and the Texas Board of Physician Assistants to jointly develop Frequently Asked Questions by January 2014.

Prescriptive authority agreements are defined as agreements entered into between a physician and an APRN or PA through which the physician delegates to the APRN or PA the act of prescribing or ordering a drug or device. Prescriptive authority agreements shall:

- be written, signed, and dated with retention for two years after the conclusion of the agreement;
- state the name, address and licensing numbers of all parties;
- identify the nature of the practice, settings, and locations;
- identify the types or categories of drugs or devices that may be prescribed or identify types or categories of drugs or devices which may not be prescribed;
- provide a general plan for consultation and referral;
- provide a plan for patient emergencies;
- provide a general process for communication and sharing of information regarding patient care and treatment between the physician and APRN or PA;
- designate any alternate supervisors who may temporarily supervise and who may participate in quality assurance and improvement review;
- describe a prescriptive authority quality assurance plan including methods for chart review by the physician, face to face meetings between the physician and APRN or PA, sharing of patient care information, any changes needed to care plans, and discussion of patient improvement;
- face to face meetings are required to occur at least monthly for the first 3 years and at least quarterly afterward with monthly meetings in between;

- additional agreements may be added, however no requirements can be omitted;
- upon notice of investigation to one party, the party must immediately notify the other party; and
- the agreement should promote the exercise of professional judgment by the APRN or PA commensurate with the APRN or PA's experience, education, and relationship between the APRN or PA and the physician.

The Texas Medical Board, the Texas Board of Nursing, and the Texas Board of Physician Assistants are required to develop processes to share information about their respective licenses regarding the delegation of prescriptive authority. Additionally, the boards are required to share lists of their respective licenses subject to final adverse disciplinary actions involving delegation and supervision of prescriptive authority. Each of the respective boards is allowed to open their own investigation upon receiving notice of an investigation regarding prescriptive authority from any other board. The Texas Medical Board is authorized to enter clinical practices to inspect and audit practice records and activities related to the delegation of prescriptive authority.

SB 406 does not limit the number of APRNs and PAs to which prescriptive authority may be delegated in a facility-based practices. However, the bill does limit the delegation of prescriptive authority by physicians to:

- the medical director or chief of medical staff;
- the chair of the facility's credentialing committee;
- a department chair under which an APRN or PA practices; or
- physicians who consent to the request of the medical director to delegate prescriptive authority at a facility in which the APRN or PA practices.

The Texas Medical Board, the Texas Board of Nursing, and the Texas Board of Physician Assistants are directed to adopt policies and procedures for the licensure and education of APRNs as well as PAs in the proper evaluation, provision, and tracking of prescriptions. Implementation of a pilot program between physicians and APRNs for delegation under prescriptive authority agreements is required.

The Texas Nursing Board, the Texas Physician's Assistant Board, and the Texas Medical Board are directed to adopt rules necessary to implement the SB 406 by November 1, 2013.

**Impact:** UT System institutions, physicians, APRNs, and PAs should be informed and made aware of the ability to delegate additional prescriptive authority under prescriptive authority agreements in inpatient settings over 24 hours. Significantly, UT System institutions, physicians, APRNs, and PAs should be aware of the limitations of delegation authority to seven FTEs in clinical settings and the limitation of individuals

who may delegate prescriptive authority in hospital settings. Additionally, UT System institutions should be aware of the upcoming rules regarding delegation of prescriptive authority and increased information sharing, reporting requirements, and licensure provisions between the Texas Medical Board, the Texas Board of Nursing, and the Texas Board of Physician Assistants.

**Effective:** November 1, 2013

Tim Boughal

[SB 939](#) by West and Parker, et al.

Relating to reporting child abuse and neglect and to training regarding recognizing and reporting child abuse and neglect at schools, institutions of higher education, and other entities.

Regarding institutions of higher education, SB 939 amends Chapter 51 of the Education Code by adding Section 51.976 which requires a child abuse reporting policy and employee training. SB 939 requires each institution of higher education to adopt a policy governing the reporting of child abuse and neglect as required by Chapter 261 of the Family Code (*e.g.*, requiring reporting to state or local law enforcement authority; Texas Department of Family and Protective Services; state agency that operates/licenses the facility where alleged neglect or abuse occurred).

SB 939 also requires that each institution of higher education provide training for employees who are professionals in recognizing and preventing sexual abuse and other maltreatment of children and responsible for reporting such suspected occurrences. Professionals are those as defined by Section 261.101 of the Family Code, which means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The Family Code further defines “professionals” as teachers, nurses, doctors, day-care employees, and employees of a clinic or health care facility that provides reproductive services.

SB 939 states that the required training must include:

- techniques for reducing a child's risk of sexual abuse or other maltreatment;
- factors indicating a child is at risk for sexual abuse or other maltreatment;
- the warning signs and symptoms associated with sexual abuse or other maltreatment and recognition of those signs and symptoms; and
- Family Code reporting requirements and procedures.

Finally, SB 939 amends Section 42.0426 of the Human Resources Code (which relates, in pertinent part, to the training of personnel at a child care facility in recognizing symptoms of child abuse, neglect, and sexual molestation and reporting requirements) by requiring

that a licensed facility require each employee who attends a training program to sign a statement verifying attendance—which must be maintained in the employee’s personnel file.

**Impact:** This bill impacts UT System institutions by requiring additional training for any professionals subject to this bill. This bill also impacts those UT System institutions that operate a licensed child-care facility.

**Effective:** September 1, 2013

Melissa V. Garcia

[SB 945](#) by Nelson and Davis, Sarah

Relating to the identification requirements of certain health care providers associated with a hospital.

SB 945 amends the Health and Safety Code relating to hospitals licensed under Chapter 241. The bill mandates each licensed hospital to adopt a policy requiring health care providers to wear a photo ID badge during all patient encounters, unless prevented from doing so by isolation or sterilization protocols. The badge must be large enough to be visible and must clearly state:

- the first or last name of the provider;
- the department with which the provider is associated;
- the type of license held by the provider, if licensed under Title 3 of the Occupations Code; and,
- if applicable, the provider’s status as a student, intern, trainee or resident.

Badges are to be worn by “health care providers” defined in the bill as providers who are physicians, employees of the hospital, a person under contract with the hospital or persons in a training or educational program at the hospital.

**Impact:** UT hospitals may voluntarily comply with this bill although not required to do so, since UT-owned hospitals are exempt from licensure under Chapter 241; however, any UT health care provider who is providing care in a non-exempt hospital through an agreement would be required to comply with the hospital policy mandated by this bill.

**Effective:** January 1, 2014

Melodie Krane

[SB 949](#) by Nelson and Sheffield

Relating to licensing under the Medical Practice Act.

SB 949 eliminates the seven year licensure time frame for certain medical license applicants. Applicants for a medical license who are licensed in good standing as a physician in another state, have been licensed for five years, have never been subject to disciplinary orders, and will practice in a medically underserved area or health manpower shortage area are no longer required to pass all necessary licensure exams within seven years.

SB 949 allows the Texas Medical Board to establish a process to verify that an individual meeting the requirements for the elimination of the time frame practices only in an authorized area.

SB 949 further repeals Texas Occupations Code section 155.0045 requiring proof from a non-citizen medical license applicant that the individual has practiced medicine or signed an agreement to practice medicine as a condition of the license for at least three years in a medically underserved or health manpower shortage area.

**Impact:** UT System institutions with facilities in medically underserved and health manpower shortage areas should be aware that applicants for a medical license who are licensed in good standing as a physician in another state, have been licensed for five years, and have never been subject to disciplinary orders are no longer required to pass all necessary licensure exams within seven years.

**Effective:** June 14, 2013

Tim Boughal

[SB 978](#) by Deuell and Davis, Sarah

Relating to regulation by the Texas Medical Board of local anesthesia and peripheral nerve blocks administered in an outpatient setting.

This bill permits the Texas Medical Board (TMB) to adopt standards regarding the use of local anesthesia in an outpatient setting in some situations that had previously been exempt from the rules. TMB rules would now apply in an outpatient setting where only local anesthesia, peripheral nerve blocks or both are used in a total amount that exceeds 50 percent of the recommended maximum safe dosage per outpatient visit.

**Impact:** Facilities maintained or operated by a state governmental entity are exempt from the rules relating to anesthesia in an outpatient setting. However, to the extent that UT physicians utilize local anesthesia in an outpatient setting other than a UT facility that exceed these limits set by the TMB, the rules regarding limitations of anesthesia use would be applicable. Physicians should be made aware of the applicability of TMB rules regarding local anesthesia use in facilities not operated by the state.

**Effective:** September 1, 2013

Melodie Krane

**SB 1058** by Nelson and King, Susan

Relating to the regulation of the practice of nursing.

This bill makes a variety of changes to the Nursing Practice Act including the following:

- requires the Board of Nursing (BON) to use fingerprinting to obtain criminal history information for a person accepted into a nursing education program that is to result in initial licensure as a registered or vocational nurse;
- permits the BON to file a petition for a declaratory order as to a person's eligibility for licensure based on criminal history information;
- for licensing periods on or after January 1, 2014, the bill adds the following continuing education requirements;
  - licensees must complete at least two hours but not more than four hours of continuing education in nursing jurisprudence and nursing ethics before the end of every third two-year licensing period; and
  - a licensee whose practice includes older adult or geriatric populations, must complete at least two but not more than six hours of continuing education in an area relating to older adult or geriatric populations;
- expands the range of disciplinary actions permitted by the BON to include a requirement that the licensee abstain from alcohol or drug use and submit to random periodic screening for such use;
- various changes related to the disciplinary process;
- for nurses participating in a peer assistance program, information relating to the case and proceedings are made confidential to the same extent that complaints or matters relating to board orders or violations are confidential;
- gives authority to the BON to defer action on a complaint and provides confidentiality to the information for successful completion of terms of deferred action; and
- permits the BON to consider a deferred action when imposing any sanction for a subsequent violation.

**Impact:** The impact of this bill will be faced by individual licensees of the BON. The widest impact is with regard to the continuing education requirements and fingerprinting requirements. Schools of nursing should be made aware of the

fingerprinting requirement and any board rules adopted that could affect policies of the school. Nurses should be advised of the new continuing education requirements.

**Effective:** September 1, 2013

Melodie Krane

## **Pharmacists and Drugs**

[HB 1358](#) by Hunter, et al. and Van de Putte

Relating to procedures for certain audits of pharmacists and pharmacies.

HB 1358 prescribes reasonable audit limitations on health plans and their agents with respect to pharmacy claims conducted during an audit of a pharmacist or pharmacy.

Some of the highlights of the bill are as follows:

- written notice 14 days in advance of the audit;
- accommodation of pharmacists/pharmacy schedule;
- 20 day minimum for pharmacists to collect requested desk audit materials;
- network contracts must detail audit procedures for both on-site and desk audits;
- reasonable audit methodologies;
- limitations on the basis for allegations of fraudulent activities;
- allegations that a pharmacist/pharmacy committed fraud or intentional misrepresentation must be stated in the final audit report;
- auditors cannot directly or indirectly receive compensation based on a percentage of the audit amount recovered; and
- expansion of audit appeal rights by pharmacies/pharmacists.

The bill exempts from its provisions health plans and their agents administering pharmacy benefits under the state Medicaid program, the federal Medicare program, the state child health benefit plan for children, the TRICARE military health system, certain workers' compensation insurance policies, and a self-funded health benefit plan.

**Impact:** This legislation will favorably impact pharmacies and pharmacists by requiring that pharmacy audits be conducted with a reasonable and constructive methodology and include expanded appeal rights.

**Effective:** September 1, 2013

Chuck Johnstone

[HB 1803](#) by Callegari and Huffman

Relating to controlled substance registration by physicians and the regulation of persons engaged in pain management; changing the payment schedule for a fee.

Physicians in Texas are required to be registered by the Texas Medical Board (TMB) in order to practice medicine and if prescribing medications, they must also register with the Texas Department of Public Safety (DPS) in compliance with the Texas Controlled Substances Act. This bill aligns the renewal dates for a physician's license to practice medicine and the controlled substance registration and authorizes one agency, the TMB, to collect fees and to issue both the license and the registration. An unexpired controlled substance registration held on the effective date of the Act, will expire on the date the physician's registration permit expires.

At least sixty days prior to the expiration of a physician's registration permit, the TMB must provide notice of a registration permit renewal application and renewal notice for the controlled substance registration. The physician must be able to submit the required information for renewal as well as the renewal fee electronically.

Regarding pain management clinics, the bill requires that an exemption from licensing of a clinic is applicable only for physicians and advanced practice nurses who treat patients in their area of specialty and who personally use other forms of treatment with the issuance of a prescription for the majority of patient. The bill specifically states that a person who owns or operates a pain management clinic is engaged in the practice of medicine.

**Impact:** This bill would impact all physicians that maintain a registration permit to practice medicine and a controlled substances permit, making it easier to renew these registrations simultaneously.

**Effective:** January 1, 2014

Melodie Krane

[SB 404](#) by Schwertner and Davis

Relating to complaints filed with the Texas State Board of Pharmacy; authorizing fees.

SB 404 makes several changes to the powers of the Texas State Board of Pharmacy (Board) with respect to its complaint process:

- the Board is required to maintain a complainant's identity regarding a complaint;

- the Board is prohibited from acting on a complaint involving an allegation seven years prior or greater;
- the Board is required to establish procedural rules for informal disciplinary proceedings; and
- the Board is authorized to promulgate remedial plans to resolve complaints provided the complaint does not involve death, hospitalization, felonious conduct, restriction of licensee's pharmacy practice, or where a previous unrelated remedial plan was given within the preceding 24 months.

**Impact:** This legislation will impact pharmacists by requiring the Texas State Board of Pharmacy to develop procedures related to remedial plans to resolve certain complaints and to establish rules for informal disciplinary proceedings.

**Effective:** September 1, 2013

Chuck Johnstone

[SB 566](#) by Eltife, et al. and Clardy

Relating to the establishment of a pharmacy school at The University of Texas at Tyler.

SB 566 allows The University of Texas System Board of Regents to establish a pharmacy school at The University of Texas at Tyler. The Board of Regents are also allowed to prescribe courses leading to customary degrees offered at other leading American schools of pharmacy and may award those degrees.

The Board of Regents would support the operations and capital expenses through tuition, gifts, grants, and other institutional or system funds.

The pharmacy school would not be eligible for state funding under the formula funding system.

**Impact:** This directly impacts The University of Texas at Tyler.

**Effective:** June 14, 2013

Melissa V. Garcia

[SB 644](#) by Huffman and Zerwas

Relating to the creation of a standard request form for prior authorization of prescription drug benefits.

SB 644 requires the commissioner of the Texas Insurance Commission (TIC) to prescribe a standard single form to be used by health insurance and benefit plans to request prior authorization of drug benefits. The TIC is required to develop, prescribe and make

electronically available a single form for a request for prior authorization of drug benefits no more than two pages in length. The form is required to allow electronic submission from the prescribing provider to the health benefit plan.

SB 644 further requires the TIC to appoint and consult a committee to advise the commissioner upon the practical, technical, and operational aspects of developing the single form. The committee will be composed of an equal number of physicians, other prescribing health care providers, hospitals, pharmacists, pharmacy benefit managers, and health benefit plans serving without compensation. SB 644 requires that the commissioner consult with the advisory committee as well as take into consideration any widely used current form, forms used by CMS, and national standards in the development of the form. Biennial review of the form is required.

Upon adoption, the use of the single form for prior authorization by all health benefit plans is required, and failure by the health benefit plan to use, accept the form, or respond within two days of receipt of the form will result in the prior authorization being considered granted by the health benefit plan.

SB 644 applies to health benefit plans including an insurance company, group hospital service corporations, fraternal benefit societies, stipulated premium companies, reciprocal exchanges, HMO's, multiple employer welfare arrangements, non-profit health corporations, coverage for school districts, government risk pools, basic coverage plans, primary care coverage plans, worker's compensation coverage, CHIP, Medicaid, and Medicare. The bill does not apply to benefit plans covering only a specific disease, accidental death and dismemberment insurance, wage replacement insurance, credit insurance, dental insurance, hospitalization only insurance, indemnity plans, Medicare supplemental insurance, motor vehicle insurance, and long term care insurance.

The TIC is required to prescribe a standard form by January 1, 2015, and use of the form is required beginning September 1, 2015.

**Impact:** UT System institutions and employees with prescribing authority should be aware of the requirement to use and submit the standard form prescribed by the TIC to request prior authorization of prescription drug benefits beginning September 1, 2015. UT System institutions and employees with prescribing authority should also be aware of the ability to submit the required form electronically. To the extent UT System institutions participate in or operate health benefit plans, they should be aware of the requirement to use the prescribed form as well as the requirement to respond within two days of receipt of the form or it will be deemed granted.

**Effective:** September 1, 2013

Tim Boughal

[SB 869](#) by Van de Putte and Zedler

Relating to the regulation of the practice of pharmacy; authorizing fees.

SB 869 clarifies ambiguities and regulations relating to pharmacies and pharmacists, including specifically:

- requiring the Texas State Board of Pharmacy (Board) to establish rules for the use and duties of a pharmacy technician trainee including being directly supervised by a pharmacist and perform nonjudgmental duties;
- requiring the Board to establish standards for an approved training program for pharmacy technicians;
- requiring the Board to establish minimum educational requirements for pharmacy technician trainees;
- clarifying that certain statutory prohibitions apply not only to pharmacy technicians but also to pharmacy technician trainees;
- clarifying that the Board may discipline an applicant for, current holder of, or expired holder of a pharmacist-intern registration in the same manner as against a license holder or an applicant for a license holder if the Board finds the applicant or registration holder warrants disciplinary action;
- prohibiting a person from renewing a license to practice pharmacy if their license in another state has been suspended, revoked, canceled, or is subject to a disciplinary action prohibiting their practice; and
- requiring an applicant for a pharmacy license to prove to the Board that a license held in Texas or another state has not been restricted, suspended, revoked, or surrendered for any reason.

**Impact:** SB 869 will result in additional rules and standards being promulgated by the Texas State Board of Pharmacy regarding pharmacy trainees, pharmacy technicians and pharmacist-interns and further restrictions on the licensing of individuals from other states.

**Effective:** June 14, 2013

Chuck Johnstone

## Medical Services

[HB 2 \(Second Called Session\)](#) by Laubenberg, et al and Hegar.

Relating to the regulation of abortion procedures, providers, and facilities; providing penalties.

This bill declares, based on substantial medical evidence, that fetuses feel pain by at least 20 weeks after fertilization and that there is a compelling state interest in protecting them from this point of development. Towards that end, the bill amends the Health and Safety Code as follows:

- **PHYSICIANS.** On the date that an abortion is performed or induced a physician is required to: 1) have admitting privileges at a hospital not more than 30 miles from the place of the abortion; 2) provide OB/GYN health care services; and 3) provide the woman with a telephone number for the physician or other personnel employed by the physician or facility with access to relevant medical records 24 hours a day to assist with complications or questions relating to the abortion; and, 4) contact information for the nearest hospital to the woman's home where emergency services are provided.
- **OFFENSE & PENALTY.** Violation of the above requirements is a Class A misdemeanor punishable only by a fine, not to exceed \$4,000.
- **PROHIBITION.** Prior to performing an abortion or inducing an abortion, a physician must determine the probable post-fertilization age of the fetus or possess and rely on such determination by another physician. An abortion is prohibited where the probable post-fertilization age of the fetus is 20 or more weeks as determined by a person performing or attempting to perform an abortion.
- **EXCEPTIONS.** If the woman's condition is so complicated that an abortion is necessary to avert the woman's death or serious risk of substantial and irreversible impairment of a major bodily function (other than psychological condition) then the prohibitions and requirements do not apply. This situation may necessitate: 1) immediate abortion without determination of the post-fertilization age; 2) abortion even though the post-fertilization age is 20 weeks or more; or 3) an abortion method other than one that provides the best opportunity for the fetus to survive. These exceptions do not apply if the risk arises from a claim or diagnosis that the woman may engage in conduct that may result in death or impairment.

Prohibitions and restrictions do not apply in the case of a severe fetal abnormality.

- **PRIVACY.** In any civil or criminal proceeding or proceeding relating to prohibited acts, the identity of the woman shall not be publicly disclosed without the woman's consent to disclosure. Disclosure may be ordered by the court in some situations but not without hearing and court ruling that disclosure is essential.

- ABORTION-INDUCING DRUGS. Only physicians may give, sell, dispense, administer, provide or prescribe abortion-inducing drugs, including off-label drugs to induce abortion and the Mifeprex regimen, also known as RU-486. If provided or prescribed, then the drug protocol must satisfy that authorized by the U.S. Food & Drug Administration (FDA) as outlined in the final printed label of the drug. The drug may be provided in the dosage amount prescribed by the clinical management guidelines defined by the American Congress of Obstetricians and Gynecologists Practice Bulletin as they existed on January 1, 2013. Before dispensing or prescribing the drug, the physician shall: 1) examine the woman, documenting the gestational age and intrauterine location of the pregnancy; 2) provide the woman with a copy of the final printed label of the drug; and 3) provide the woman with a telephone number for reaching the physician or other health care provider employed by the facility or the physician where the abortion was performed with access to the woman's medical records 24 hours a day in order to assist with any complications or questions. The physician or the physician's agent must schedule a follow-up visit with the patient within 14 days after the use of the drug at which time the physician must confirm completion of the termination and assess the degree of bleeding. Reasonable efforts are to be made to schedule this follow-up and such efforts, including the date, time, and name of person making the effort, are to be documented in the patient's record. If a physician who provides an abortion-inducing drug to a woman is aware of a serious adverse event, as defined by the MedWatch Reporting System, then the physician shall report the event to the FDA through the MedWatch Reporting System within three days of learning of the event.

The Texas Medical Board (TMB) is responsible for enforcement of this section of the bill. The TMB may take disciplinary action or assess an administrative penalty against the physician for violation of the laws relating to abortion-inducing drugs but no penalty may be assessed against the patient.

- FACILITY STANDARDS. By September 1, 2014 the minimum standards for an abortion facility become equivalent to those for an ambulatory surgical center. The annual report that is required under current law for each abortion performed at an abortion facility must also include the probable post-fertilization age of the fetus.

This bill also amends the Occupations Code relating to physician licensing such that performing or inducing an abortion or attempting these in violation of this law is prohibited under the Texas Medical Practice Act. Criminal penalties do not apply to offenses for performing an abortion.

If any portion of the bill is declared unconstitutional or restrained or enjoined, then those provisions are severable and the severability does not affect the other statutory provisions.

**Impact:** Any facility and physician performing abortions in Texas will have to comply with this law or be subject to penalties or disciplinary proceedings. In addition,

physicians and institutions, including student health centers and pharmacies within all of the institutions, should be aware of the restrictions and requirements related to abortion-inducing drugs.

**Effective:** This Act takes effect October 29, 2013, except Section 8 takes effect September 1, 2014.

Melodie Krane

[HB 15](#) by Kolkhorst, et al. and Nelson

Relating to level of care designations for hospitals that provide neonatal and maternal services.

This bill amends the Health and Safety Code to add a new subchapter requiring the executive commissioner of the Health and Human Services Commission (HHSC) to assign level of care designations to each hospital based on neonatal and maternal services provided.

The HHSC executive commissioner is to adopt rules relating to level of care designations, including rules that establish the levels of care for neonatal and maternal services to be assigned to a hospital, prescribe criteria for these designations with specifications of minimum criteria for each level, establish a process for assignment and amending of levels of care, divide the state into regions for these designations, facilitate transfer agreements, require payment to be based on services provided regardless of designation and prohibiting the denial of a designation if minimum requirements are met. The criteria for the designation of levels one through three may not be based on the number of patients treated at a hospitals. Each level of care designation shall require the submission of outcome data and other data as required by the Department of State Health Services, however, such information is confidential, privileged, and inadmissible in a legal proceeding. Neonatal and maternal services are to be evaluated separately and may receive different designations. The level of care designations shall be reviewed every three years. A hospital may request a change of designation.

In addition to the adoption of rules, the HHSC is to study patient transfers for medical necessity and cost-effectiveness.

A hospital that fails to meet minimum requirements for any level of care designation may not receive a designation and cannot be reimbursed through Medicaid for neonatal or maternal services, except for emergency services required under state or federal law.

A seventeen member Perinatal Facility Designation Implementation Task Force is to be appointed by the HHSC executive commissioner by December 1, 2013 to work with HHSC in implementing this bill. Initial rules are to be adopted by the executive commissioner by March 1, 2017 after consideration of the task force report. Neonatal level of care designations are to be completed by August 31, 2017 and the maternal level of care designations are to be completed by August 31, 2019.

**Impact:** Since this bill adds a new subchapter to Tex. Health & Safety Code Ch. 24, known as the Hospital Licensing Act and from which UT hospitals are exempt, UT hospitals are at least arguably exempt from this bill; however, there is no specific exemption in this bill for hospitals operated by state governmental entities. If applicable, UT owned and operated hospitals that provide maternal and/or neonatal services would be subject to the level of care designations and submission of outcome data. Medicaid reimbursement for services would be at risk in the unlikely event that a UT hospital was unable to maintain minimum requirements for any level of care designation.

**Effective:** September 1, 2013

Melodie Krane

[HB 740](#) by Crownover, et al. and Deuell

Relating to newborn screening for critical congenital heart disease and other disorders.

HB 740 charges the Department of State Health Services (DSHS) with performing newborn screening for disorders listed as core or secondary conditions at birthing facilities providing care to newborns, provided funding is available and DSHS has reviewed each screening test's necessity and cost effectiveness.

In particular, HB 740 expanded Texas' standard newborn screening panel to require testing for critical congenital heart disease (CCHD) with testing that complies with DSHS procedures and standards.

**Impact:** The Department of State Health Services will require that health care component institutions and practitioners perform testing on newborns for critical congenital heart disease and other disorders provided the testing is necessary and cost effective.

**Effective:** September 1, 2013

Chuck Johnstone

[HB 746](#) by Ashby and Schwertner

Relating to the registration of volunteer health practitioners and the services of volunteer health practitioners during disasters.

HB 746 charges the Texas Division of Emergency Management with regulating an in-state and out-of-state volunteer health registration program for practitioners in the event of an emergency declaration. Those volunteers must be registered with the volunteer health practitioner registration system administered by the Department of State Health Services. It requires proof of licensing and good standing as well as a criminal history background check.

**Impact:** Volunteer health practitioners will now have a means of registering to be volunteers for emergencies declared both within and outside of Texas.

**Effective:** September 1, 2013

Chuck Johnstone

[HB 978](#) by Raymond and Zaffirini

Relating to the transportation of certain patients to a mental health facility.

HB 978 expands the abilities of individuals not in law enforcement to transport persons with mental illness across the State of Texas. Those individuals must either be authorized to do so by a court of law or be a qualified transportation service provider included on a list established by the commissioners' court in the county where the court is located.

**Impact:** Health care institutions treating mentally ill persons will have access to additional transportation service providers for transporting persons with mental illness.

**Effective:** September 1, 2013

Chuck Johnstone

[HB 1376](#) by Kolchorst and Nelson

Relating to advertising by certain facilities that provide emergency services; providing an administrative penalty.

HB 1376 amends the Health and Safety Code by regulating advertising by freestanding emergency medical care facilities associated with licensed hospitals. This provision applies only to structurally separate facilities that are not located within or connected to a hospital or owned or operated by a hospital and surveyed as a service of the hospital by an organization that has been granted deeming authority as a national accreditation program for hospitals by the Centers for Medicare and Medicaid Services or granted provider-based status by the Centers for Medicare and Medicaid Services.

Non-exempt freestanding emergency medical care facilities associated with licensed hospitals may not advertise or hold themselves out as a medical facility or provider other than an emergency room if charging the usual and customary rate charged for the same service by a hospital emergency room in the same region of the state. The Department of State Health Services is required to adopt rules for a notice to be conspicuously posted notifying prospective patients that the facility is an emergency room and that it charges rates comparable to hospital emergency rooms. The HHSC Commissioner may assess an administrative penalty against a hospital that violates this chapter.

**Impact:** Since UT System hospitals are not licensed under Chapter 241, they are not subject to these posting requirements nor subject to the administrative penalty. However, they may voluntarily choose to comply.

**Effective:** September 1, 2013

Allene Evans

[HB 1395](#) by King and Nelson

Relating to the exemption of registered dental laboratories from certain distributing and manufacturing licensing requirements.

HB 1395 exempts registered dental laboratories from the requirement to comply with the requirements to possess a license as a distributor or manufacturer from the Health and Human Services Commission for each place of business. The bill exempts registered dental laboratories certified under Chapter 266 of the Texas Occupations Code (allowing certification as a dental laboratory) from also being licensed as a device distributor or manufacturer in order to conduct business.

**Impact:** To the extent that UT System institutions operate or conduct business with registered dental laboratories, the institutions should be made aware of the compliance and licensure exemption provided the dental laboratory complies with the certification requirements of Chapter 266 of the Texas Occupations Code.

**Effective:** September 1, 2013

Tim Boughal

[HB 1738](#) by Naishtat, et al. and Zaffirini

Relating to the emergency detention by a peace officer of a person who may have mental illness, including information provided to the person subject to detention and a standard form of notification of detention to be provided to a facility by a peace officer.

This bill amends sections 573.001, 573.002, 573.021(a), and 573.025 of the Texas Health & Safety Code concerning emergency detentions of mentally ill persons by a peace officer without a warrant.

- Section 573.001 requires the peace officer to immediately inform the person orally in simple, nontechnical terms of the reason for the detention and that a staff member of the facility will inform the person of the person's rights within 24 hours after the time the person is admitted to a facility.
- Section 573.002 requires a peace officer to immediately file a written notification of detention with the mental health facility to which the peace officer transported the individual.

- Section 573.002 contains a form that the peace officer is required to use for the notification of detention. Section 573.002(e) provides that a mental health facility or hospital emergency department may not require a peace officer to execute any form other than the form contained in section 573.002 as a predicate to accepting for temporary admission the detained person.
- Section 573.021(a) provides that a facility shall temporarily accept a person for whom a peace officer files a notification of detention.
- Section 573.025 adds to the list of rights of the detained person “a reasonable opportunity to communicate with a relative or other responsible person who has a proper interest in the person's welfare.”

**Impact:** UT System Police and Institution Police need to be aware of these specific requirements when taking a mentally ill person into custody. UT hospital emergency departments and any UT mental health facilities (as defined by section 571.003, Texas Health & Safety Code) need to be aware of the requirement to temporarily accept a person for whom a peace officer files a notification of detention, and the requirement that the detained person be informed of his rights within 24 hours after admission.

**Effective:** September 1, 2013

Jack C. O'Donnell

**SB 62** by Nelson and Laubenberg

Relating to the vaccination against bacterial meningitis of entering students at public and private or independent institutions of higher education.

SB 62 amends Education Code 51.9192, which currently requires all "entering students" at an institution of higher education below the age of thirty to provide proof that they have received a vaccination against bacterial meningitis within the last five years prior, or that they have met the requirements for claiming an exemption the requirement, before they can enroll in the institution.

The bill amends the statute to apply only to students under the age of twenty two.

It also adds the requirement that all students must use an affidavit from issued by the Texas Department of State Health Services (DSHS) to claim an exemption from the vaccination requirement based on a conscientious or religious objection and that the affidavit must be submitted within 90 days of the date that it is notarized.

Currently, the statute does not dictate the affidavit form that students must use to claim such an exemption. However, the Texas Higher Education Coordinating Board (THECB), which has rulemaking authority with respect to the statute, has adopted a rule that requires entering students who plan to reside in on-campus housing or are under the age of 18 to use the affidavit form and process promulgated by DSHS, while students who do not intend to reside in on-campus housing to use a different affidavit and process.

The bill also amends Section 161.0041 of the Health & Safety Code to clarify that any student claiming a conscientious or religious exemption from the vaccination requirement set forth in Education Code 51.9192 must use the DSHS-issued affidavit form.

Finally, the bill allows public junior colleges to comply with the vaccination requirement by using an internet-based compliance tool. This provision does not apply to System institutions.

**Impact:** The change to the age requirement will reduce the number of students that UT System institutions will be required to track. The change to a single affidavit requirement and process for all students claiming a conscientious or religious exemption will reduce the administrative burden to the institutions, which are currently required to determine each affected student's housing plans and ensure that each student uses the correct affidavit form and process. The UT System Office of General Counsel, in consultation with the Office of Academic Affairs, has amended the model policy and FAQs it published previously to assist UT System institutions with their compliance obligations.

**Effective:** October 1, 2013

Barbara Holthaus

[\*\*SB 63\*\*](#) by Nelson and Sheffield, J.D.

Relating to consent to the immunization of certain children.

This bill adds a new section to the Family Code, Section 32.1011, that permits any minor child to consent to being immunization against any disease, if the minor child is pregnant or is the parent of, and has custody of, a child. The health care provider may rely on the minor child's assertion that she or he qualifies to consent to the immunization under this section. The minor child must give written consent to the provider.

**Impact:** The bill will make it easier for UT System health care providers to provide preventative care to certain female minors who are pregnant or parents themselves.

**Effective:** June 14, 2013

Barbara Holthaus

[\*\*SB 64\*\*](#) by Nelson, et al. and Zerwas

Relating to a policy on vaccine-preventable diseases for licensed child-care facilities.

SB 64 amends Subchapter C, Chapter 42 of the Human Resources Code by adding a section requiring licensed child-care facilities other than in the home of the director, owner, operator or facility caretaker to have a policy in place that requires each facility employee to receive vaccines for specified vaccine-preventable diseases based upon the level of risk the employee presents to children by the employee's routine and direct

exposure to children. The policy must include compliance verification and record keeping as well as exemption procedures. Exemption procedures must include vaccines for employees with medical conditions identified as contraindications or precautions by the Center for Disease Control and Prevention. Exemption procedures may include reasons of conscience, including religious belief. The policy must include procedures exempt employees must follow to protect children from disease exposure such as the use of protective medical equipment, including gloves and masks. Retaliation against exempt employees is prohibited. The executive commissioner of the Health and Human Services Commission shall adopt rules necessary for implementation by June 1, 2014. Facilities are not required to have a policy on vaccine-preventable diseases in effect until September 1, 2014.

Subchapter C does not apply to state-operated facilities or state agencies, however, these terms are not defined for purposes of this chapter. Implementing rules will likely clarify applicability.

**Impact:** To the extent that UT System institutions operate licensed child-care facilities deemed subject to Chapter 42, there would be incidental administrative and protective medical equipment expense. Even if not subject to these requirements, institutions with child-care facilities may choose to comply. Compliance would likely reduce disease transmission and improve the health of employees and children under their care.

**Effective:** September 1, 2013

Allene Evans

[SB 312](#) by Hegar and Laubenberg

Relating to the regulation of speech-language pathology and audiology.

SB 312 directs the Department of State Health Services and State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments to implement rules establishing requirements for the fitting and dispensing of hearing instruments by the use of telepractice. Rules to be implemented include the establishment of qualifications and duties of individuals engaging in telepractice.

SB 312 further allows military spouses the ability to be issued a speech-language pathology license if they were previously licensed in another state, possess a master's degree in an accredited area of communicative science, and have not been the subject of disciplinary action in any jurisdiction where they were previously licensed.

SB 312 removes the requirement that licensees have received at least 6 semester hours of course work in audiology if the license is for speech-language pathology, or 6 semester hours of course work in speech-language pathology for audiology. The bill also removes the requirement that examination results be available within 30 days of the date of administration and repeals Texas Occupations Code sections:

- 401.309 - allowing issuance of temporary licenses,
- 401.314 - allowing issuance of limited licenses to practice in public schools,
- 401.355(c) - requiring mandatory continuing education for licensees, and
- 401.401 - requiring measure of ambient noise levels if audiometric testing is not conducted in a stationary acoustical enclosure.

The State Board of Examiners for Speech-Language Pathology and Audiology are required to adopt rules for the implementation of SB 312 by January 1, 2014.

**Impact:** UT System institutions employing individuals in speech-language pathology and audiology should be aware of the ability to utilize telepractice and the ability of military spouses to gain licensure. UT institutions instructing students in speech-language pathology and audiology should be aware of the removal of the requirement that audiologists and speech-language pathologists must each study at least six course hours of the opposite field. Additionally, UT institutions should be aware of the repeal of the mandatory continuing education requirement, the ability to apply for a temporary license, and the requirement to measure ambient noise levels if audiometric testing is not conducted in a stationary acoustical enclosure.

**Effective:** September 1, 2013

Tim Boughal

[SB 495](#) by Huffman and Walle, et al.

Relating to the creation of a task force to study maternal mortality and severe maternal morbidity.

This bill creates the Maternal Mortality and Morbidity Task Force, a multidisciplinary advisory committee of 15 specified members, within the Department of State Health Services (DSHS). The task force's mandate is to study cases of pregnancy-related deaths and trends in severe maternal morbidity, determine the feasibility of the task force studying cases of maternal morbidity, and make recommendations to help reduce the incidence of pregnancy related deaths and severe maternal morbidity. The bill does not apply to voluntary or therapeutic termination of pregnancy and such data is not to be collected.

The DSHS is to determine a statistically significant number of cases of pregnancy-related deaths for review to reflect a cross-section of pregnancy-related deaths in the state. If feasible, aggregate data relating to severe maternal morbidity will be analyzed to identify trends.

After selection of a pregnancy-related death or severe maternal morbidity case for review, DSHS is to obtain relevant information for review including the name, address, or date of birth of the patient or a member of the patient's family or the name or specific

location of a treating health care provider. The custodian of the requested information is required to provide the information without authorization of the patient or the patient's family. Providers of this information to the DSHS are not subject to administrative, civil, or criminal action for having provided the information.

The information provided is confidential and privileged. Specified identifiable data may not be disclosed, while other general information that does not identify an individual, case, or health care provider or is aggregated is not confidential and may be published by the task force. Task force work product or information obtained by DSHS, including information in an electronic data base is confidential, privileged, not subject to subpoena or discovery, and may not be used in any administrative, civil or criminal proceeding against a patient or the patient's family or a health care provider. Task force members and advisors are immune from liability for damages for actions within the task force functions, unless they act with malice or without reasonable belief that action is warranted based on known facts. Immunity is not available to those who violate state and federal privacy laws, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

To aid in the functions of the task force and DSHS, DSHS may maintain a database of de-identified information to track cases of pregnancy-related deaths and severe maternal morbidity with the database only accessible to the task force and DSHS.

Of significance, in order to fulfill its duties under this bill, DSHS may have access to information, including patient identifiable information, available in birth records, fetal death records, maternal death records and hospital and birthing center discharge data. DSHS may not disclose this information to the task force or any other person.

Meetings of the task force must be held at least quarterly and are closed to the public and not subject to the state Open Meetings Act. The task force may consult with relevant experts, stakeholders, and professional associations and specifically may enter into agreements with higher education institutions. Initial appointments to the task force by the DSHS commissioner must be made by December 1, 2013.

By September 1 of each even-numbered year, beginning September 1, 2016, the task force and DSHS are to submit a joint report of findings and recommendations to the legislative leadership and to disseminate the report to specified professional associations and organizations.

Under Sunset provisions, the task force is abolished September 1, 2019.

**Impact:** This bill could impact UT hospital operations and policies regarding the disclosure of patient information. Policies about the disclosure of such data should be reviewed for necessary revision and personnel training regarding disclosure of patient data may require modification.

**Effective:** September 1, 2013

Melodie Krane

[SB 646](#) by Deuell and Naishtat, et al.

Relating to court-ordered outpatient mental health services.

- SB 646 amends the Health and Safety Code provisions relating to court-ordered mental health services by specifying applicable procedures and clarifying that courts may order medication compliance but may not sanction patients for non-compliance.
- The program of treatment must include care coordination services and any other services or treatment a treating physician considers clinically appropriate to treat the patient's mental illness and assist the patient in functioning safely in the community.
- A court that receives information that a patient is not complying with the court-ordered program may set a modification hearing or issue an order for temporary detention. Patient failure to comply is not grounds for punishment for contempt.
- An application for Order for Temporary Detention or Apprehension and Release Under Temporary Detention Order must detail the reasons the patient meets the criteria for court-ordered inpatient mental health services prescribed for temporary mental health services or extended mental health services.
- A facility administrator shall immediately release a patient held under a temporary detention order if at any time during the detention the examining physician determines that the patient does not meet the criteria for court-ordered inpatient mental health services.
- A person may not administer a psychoactive medication to a patient under court-ordered inpatient mental health services who refuses to take medication voluntarily unless certain exceptions apply, including that the patient is having a medication-related emergency.
- Not later than December 1, 2016, the agency must report on court-ordered outpatient mental health services and their effectiveness to the legislature.

**Impact:** To the extent that some UT System health institutions and providers provide court-ordered mental health services there may be an effect on care plans and procedures.

**Effective:** September 1, 2013

Allene Evans

[SB 651](#) by Rodriguez and Thompson

Relating to a medical power of attorney.

SB 651 creates a new Medical Power of Attorney form. The new form requires that a medical power of attorney must be signed and notarized or signed in the presence of two competent adult witnesses who also sign the form in order to be effective.

Medical power of attorney forms signed prior to the effective date of SB 651 remain effective, valid, and governed by the law in effect at the time the document was signed.

SB 651 further allows a person who is a near relative or with a direct interest in the principal to request revocation of the medical power of attorney because the principal was not competent or under duress, fraud, or undue influence at the time the power of attorney was executed. The ability to file an action requesting revocation of a medical power of attorney applies retroactively to allow actions for previously effective medical powers of attorney.

The Health and Human Services Commission is required to adopt forms to comply with SB 651 by October 1, 2013.

**Impact:** UT System institutions, physicians, and health care providers should be made aware of the requirement that a medical power of attorney be notarized or witnessed by two competent adult witnesses to be effective. All health care providers at UT System institutions will need to be trained regarding the new requirements for a medical power of attorney to be considered properly executed and effective prior to allowing the individual named in the power of attorney to make medical decisions, including end of life decisions.

**Effective:** This Act takes effect September 1, 2013, except section 1 and 4 take effect January 1, 2014.

Tim Boughal

[SB 718](#) by West and Burkett

Relating to voluntary and involuntary mental health services.

This bill amends various provisions of the Health and Safety Code to make the legal requirements for consent to mental health treatment in an outpatient setting, which was not previously addressed by law, the same as the requirements for consenting to treatment in an inpatient mental health facility.

In addition, a person younger than 16 years of age who is or has been married may no longer consent to mental health treatment, either inpatient or outpatient.

The bill permits an inpatient mental health facility to admit or provide services to a person 16 years or older and younger than 18 years if a legally authorized person

consents on behalf of the patient, even if the potential patient does not. However, a person or appointed agency acting on behalf of a person younger than 18 may request inpatient treatment only with the person's consent, otherwise a court-appointed mental health services or emergency detention or an order for protective custody must be obtained. Thus, a person younger than 18 years may not be involuntarily committed unless provided by this chapter, other state law, or department rule.

**Impact:** This bill will affect the consent process applicable to inpatient and outpatient mental health services. Policies relating to consent and personnel training will need revision to comply with these changes. These changes are of particular note for personnel at the Harris County Psychiatric Center at The University of Texas Health Science Center at Houston.

**Effective:** June 14, 2013

Melodie Krane

[SB 793](#) by Deuell and Laubenberg

Relating to newborn hearing screening.

SB 793 clarifies that newborn hearing screening required through a Department of State Health Services (DSHS) certified program by a birthing facility must be performed either directly by or through a referral to another DSHS certified program (versus the previously required transfer agreement). However, it is acceptable for a newborn newly discharged from the birthing facility before 10 hours has passed and referral is made to another facility's DSHS certified program or to a physician's office or a health care provider.

**Impact:** The legislation will result in more newborn screenings for hearing tests being performed through a simple referral process to facilities with DSHS certified hearing testing programs rather than requiring transfer agreements for such testing to be in place.

**Effective:** June 14, 2013

Chuck Johnstone

[SB 872](#) by Deuell and Coleman

Relating to county expenditures for certain health care services.

SB 872 allows a county to credit an intergovernmental transfer to the state toward eligibility for state assistance when the transfer is made to provide health care services as part of the Texas Healthcare Transformation and Quality Improvement Program waiver.

SB 872 allows a county to credit intergovernmental transfers toward eligibility for state assistance that do not exceed 4% of the county's general revenue levy in any fiscal year if

the commissioner's court determines the expenditure fulfills the county's obligations to provide indigent health care, the amount of care available through participation in the waiver is sufficient to meet the requirements of Chapter 61 of the Texas Health and Safety Code, and the county receives periodic payments from health care providers that receive supplemental or incentive payments under the Texas Healthcare Transformation and Quality Improvement Program waiver.

The Department of State Health Services is required to submit a report to the Legislature regarding the effects of SB 872 by December 1, 2014.

**Impact:** Any UT System institutions which provide periodic payments to county indigent health care programs in order to receive supplemental or incentive payments should be aware of the ability for a county to credit such payments for intergovernmental transfers.

**Effective:** June 14, 2013

Tim Boughal

[SB 978](#) by Deuell and Davis, Sarah

Relating to regulation by the Texas Medical Board of local anesthesia and peripheral nerve blocks administered in an outpatient setting.

This bill permits the Texas Medical Board (TMB) to adopt standards regarding the use of local anesthesia in an outpatient setting in some situations that had previously been exempt from the rules. TMB rules would now apply in an outpatient setting where only local anesthesia, peripheral nerve blocks or both are used in a total amount that exceeds 50 percent of the recommended maximum safe dosage per outpatient visit.

**Impact:** Facilities maintained or operated by a state governmental entity are exempt from the rules relating to anesthesia in an outpatient setting. However, to the extent that UT physicians utilize local anesthesia in an outpatient setting other than a UT facility that exceed these limits set by the TMB, the rules regarding limitations of anesthesia use would be applicable. Physicians should be made aware of the applicability of TMB rules regarding local anesthesia use in facilities not operated by the state.

**Effective:** September 1, 2013

Melodie Krane

**SB 1191** by Davis and Thompson, Senfronia

Relating to the duties of health care facilities, health care providers, and the Department of State Health Services with respect to care provided to a sexual assault survivor in an emergency department of a health care facility.

This bill establishes requirements for services to a sexual assault survivor that apply to a health care facility that has an emergency department, including a general or special hospital owned by the state.

For those health care facilities that are not designated in a community-wide plan as the primary health care facility for treating sexual assault survivors, the facility is required to: 1) inform a sexual assault survivor that they are not the designated community facility for treating sexual assault survivors and to provide the name and located of the designated facility; and 2) inform the survivor that they are entitled to receive mandated care at the designated facility or to be stabilized and transferred to the designated facility. If the survivor chooses to be transferred, the facility must, after obtaining the written signed consent to the transfer, stabilize and transfer the survivor to the designated facility.

Current law requires that a health care facility providing services to a sexual assault survivor must provide, among other things, a forensic medical examination if requested by a law enforcement agency. Under this bill, a forensic examination on a sexual assault survivor can only be performed by a person with basic forensic collection training.

Each health care facility with an emergency department that is not the designated facility for treating sexual assault survivors must develop a plan to train personnel on sexual assault forensic evidence collection. Forensic evidence collection training approved for continuing education by the nursing or physician licensing boards satisfies the training requirement.

**Impact:** Each UT health care facility should assess the applicability of this statute to its facility. If applicable, UT facilities may be required to develop a plan to train personnel on sexual assault forensic evidence collection. Personnel should be advised of the necessity of basic training for those treating sexual assault survivors.

**Effective:** September 1, 2013

Melodie Krane

**SB 1889** by Eltife and Lavender

Relating to the transport of a mental health patient who is not a resident of this state.

SB 1889 allows the Department of State Health Services (DSHS) to return a nonresident committed to a mental health facility in Texas to the proper agency of the person's state of residence. DSHS is further permitted to enter into reciprocal agreements with other states to facilitate the return of persons committed to mental health facilities to the state of their residence.

SB 1889 requires that a reciprocal agreement must require DSHS to develop a process for the return of individuals, provide suitable care, use resources efficiently, and consider commitment to a proximate mental health facility to facilitate the return.

DSHS is required to coordinate with providers nearest to the petitioning state.

**Impact:** UT System institutions providing mental health care should be aware that DSHS has the power to return individuals from other states to their state of residence. UT System institutions providing mental health care should be aware of the requirement to coordinate as appropriate with DSHS to provide services in the mental health facility nearest to the state of the individual's residence.

**Effective:** September 1, 2013

Tim Boughal

### **Correctional Managed Care**

**SB 213** by Whitmire and Nichols

Relating to the continuation and functions of the Texas Board of Criminal Justice, the Texas Department of Criminal Justice (TDCJ), and the Windham School District and to the functions of the Board of Pardons and Paroles and the Correctional Managed Health Care Committee (CMHCC).

As it affects The University of Texas System and its health care institutions, SB 213 allows certain medical schools (including UT medical institutions at Houston, San Antonio and Dallas) to be represented by two full-time physicians appointed by the Governor to be members of the CMHCC. The membership of the CMHCC now has nine voting (plus one non-voting) members up from the previous voting membership of five. No medical school can have more than one member.

Both Texas Tech University Health Sciences Center and The University of Texas Medical Branch at Galveston (UTMB) each will have a physician appointed by their respective institution to be on the Correctional Managed Health Care Committee.

SB 213 also provides that the CMHCC must develop and approve a managed health care plan for TDCJ offenders which specifies the types and general level of care and ensures offenders' continued access to care.

SB 213 makes TDCJ responsible for establishing a managed health care provider network of physicians and hospitals, and the legislation also makes TDCJ responsible for monitoring and reporting actual and projected expenditures to the Legislative Budget Board and the governor. The financial monitoring function was previously the responsibility of the CMHCC. TDCJ is also required to develop and implement a

training program for corrections medication aides with any of the medical schools defined in SB 213.

**Impact:** SB 213 primarily impacts UTMB by decreasing UTMB's (and Texas Tech's) representation on the CMHCC by increasing the number of members. SB 213 also increases TDCJ's responsibilities relating to establishing and managing the health care network which provides medical care to TDCJ offenders, many of which are currently receiving care from UTMB. In addition to UTMB, UT medical institutions at Houston, San Antonio and Dallas will be able to contract with TDCJ to develop and implement a training program for corrections medication aides.

**Effective:** September 1, 2013

Chuck Johnstone

### **Medical Records**

[HB 2539](#) by Turner, et al. and Davis

Relating to requiring computer technicians to report images of child pornography; providing a criminal penalty.

HB 2539 adds a new Chapter 109 to the Business & Commerce Code requiring computer technicians (defined as individuals employed to install, repair, or otherwise service a computer for a fee) to report to a local or state law enforcement agency or the Cyber Tipline at the National Center for Missing and Exploited Children any images that are or that appear to be child pornography on a computer that the technician accesses in the course of his or her employment or business.

The new Chapter 109 makes the intentional failure of a computer technician to make such a report a Class B misdemeanor; however, Chapter 109 provides a defense to prosecution for such an offense if a report of an image of child pornography was not made because the child in the image appeared to be at least 18 years of age. Chapter 109 also states that computer technicians may not be held liable in civil actions for reporting or failing to report the discovery of such an image, except in cases of a technician's willful or wanton misconduct.

Furthermore, the new Chapter 109 provides that a telecommunications provider, commercial mobile service provider, or information service provider may not be held liable for the failure to report child pornography that is transmitted or stored by a user of its service.

**Impact:** UT System and the UT institutions both employ and contract with computer technicians; therefore, UT System and the UT institutions would need to ensure that such technicians comply with the requirements of the new Chapter 109.

**Effective:** September 1, 2013

Scott Patterson

[HB 3253](#) by Zerwas and Nelson

Relating to the notation of death on a birth certificate and the release of birth certificate information for certain purposes.

HB 3253 requires the state registrar to conspicuously note a person's date of death on their birth certificate after receiving the death certificate. HB 3253 further requires the state registrar to notify the county clerk for the county in which the person was born and the local registrar in the registration district where the person died such that the clerk or local registrar is required to note the date of death on the person's birth certificate.

While information regarding death noted on a birth certificate is generally confidential, HB 3253 allows the release of de-identified cause of death data from birth certificates to faculty members at a medical school for analysis.

**Impact:** UT System institutions should be aware that faculty members at medical schools and medical personnel of a health care entity are able to access de-identified information regarding the cause of death for statistical purposes.

**Effective:** June 14, 2013

Tim Boughal

[SB 58](#) by Nelson and Zerwas, et al.

Relating to the delivery of and reporting on mental health, behavioral health, substance abuse, and certain other services.

SB 58 directs the Health and Human Services Commission (HHSC) to integrate behavioral health services with physical health services provided to Medicaid-eligible persons. In addition, managed health care organizations contracting with HHSC must develop a network of behavioral health providers to provide services to adults and children with serious mental illness and emotional issues. Toward this end, HHSC is to establish two home pilot programs for persons with both a serious mental illness and a chronic health condition to determine its cost effectiveness and benefit. In addition, the Department of State Health Services (DSHS) is required to make a maximum of five grants to community collaboratives addressing homelessness and mental illness in order to establish outcomes which can be evaluated by a neutral third party. DSHS and HHSC together must establish and maintain a public reporting system of performance and outcome measures of community mental health and substance abuse services

**Impact:** This legislation will impact those health care institutions treating Medicaid-eligible persons by expanding required health care services to include the provision of care for serious mental illness and emotional issues.

**Effective:** September 1, 2013

Chuck Johnstone

**SB 126** by Nelson and Davis

Relating to the creation of a mental health and substance abuse public reporting system.

SB 126 directs the Department of State Health Services (DSHS) to establish a public reporting system for the measurement of performance and outcomes for mental health and substance abuse treatment programs. DSHS is required to create a system to allow the public to compare the performance, outcomes, and outputs of community centers providing mental health services, managed care pilot programs providing mental health services, as well as persons that contract with the state to provide substance abuse programs. Performance, output, and outcome data will be posted to the website quarterly or semiannually in accordance with when the information is reported to DSHS in order to provide transparency and consumer comparison. Information allowing the identification of any individual is not permitted to be posted.

DSHS will conduct a study to determine the feasibility of establishing and maintaining the public reporting system including the cost and impact on managed care organizations to be reported to the legislature by December 1, 2014.

The public reporting system is to be established by December 1, 2013.

**Impact:** UT System institutions providing mental health services or substance abuse services should be aware of the DSHS implementation of the reporting program and publication of data regarding program performance to the public.

**Effective:** September 1, 2013

Tim Boughal

**SB 644** by Huffman and Zerwas

Relating to the creation of a standard request form for prior authorization of prescription drug benefits.

SB 644 requires the commissioner of the Texas Insurance Commission (TIC) to prescribe a standard single form to be used by health insurance and benefit plans to request prior authorization of drug benefits. The TIC is required to develop, prescribe and make electronically available a single form for a request for prior authorization of drug benefits no more than two pages in length. The form is required to allow electronic submission from the prescribing provider to the health benefit plan.

SB 644 further requires the TIC to appoint and consult a committee to advise the commissioner upon the practical, technical, and operational aspects of developing the single form. The committee will be composed of an equal number of physicians, other

prescribing health care providers, hospitals, pharmacists, pharmacy benefit managers, and health benefit plans serving without compensation. SB 644 requires that the commissioner consult with the advisory committee as well as take into consideration any widely used current form, forms used by CMS, and national standards in the development of the form. Biennial review of the form is required.

Upon adoption, the use of the single form for prior authorization by all health benefit plans is required, and failure by the health benefit plan to use, accept the form, or respond within two days of receipt of the form will result in the prior authorization being considered granted by the health benefit plan.

SB 644 applies to health benefit plans including an insurance company, group hospital service corporations, fraternal benefit societies, stipulated premium companies, reciprocal exchanges, HMO's, multiple employer welfare arrangements, non-profit health corporations, coverage for school districts, government risk pools, basic coverage plans, primary care coverage plans, worker's compensation coverage, CHIP, Medicaid, and Medicare. The bill does not apply to benefit plans covering only a specific disease, accidental death and dismemberment insurance, wage replacement insurance, credit insurance, dental insurance, hospitalization only insurance, indemnity plans, Medicare supplemental insurance, motor vehicle insurance, and long term care insurance.

The TIC is required to prescribe a standard form by January 1, 2015, and use of the form is required beginning September 1, 2015.

**Impact:** UT System institutions and employees with prescribing authority should be aware of the requirement to use and submit the standard form prescribed by the TIC to request prior authorization of prescription drug benefits beginning September 1, 2015. UT System institutions and employees with prescribing authority should also be aware of the ability to submit the required from electronically. To the extent UT System institutions participate in or operate health benefit plans, they should be aware of the requirement to use the prescribed form as well as the requirement to respond within two days of receipt of the form or it will be deemed granted.

**Effective:** September 1, 2013

Tim Boughal

[SB 944](#) by Nelson and Kolkhorst.

Relating to criminal history record checks for certain employees of facilities licensed by the Department of State Health Services.

This bill requires hospitals that are licensed under Texas Health & Safety Code Chapter 241 and that operate mental health services units to conduct criminal background services as required by Chapter 250 of the Texas Health & Safety Code on all employees that provide services in such units.

**Impact:** This bill will not affect hospitals operated by UT System institutions; as UT System operated hospitals are exempt from Texas Health & Safety Code Chapter 241. However, UT System institutions may place faculty, staff or students at facilities subject to the new requirement to provide services or to receive clinical experience. If the facility does not already have a criminal background check requirement in place, UT System institutions will now have to comply with this requirement in order to place faculty, staff or students at the facility.

**Effective:** June 14, 2013

Barbara Holthaus

**SB 1216** by Eltife and Davis

Relating to the creation of a standard request form for prior authorization of health care services.

SB 1216 requires the commissioner of the Texas Insurance Commission (TIC) to prescribe a standard single form to be used by health insurance and benefit plans to request prior authorization of health care services. The TIC is required to develop, prescribe, and make electronically available a single form for a request for prior authorization of health care services no more than 2 pages in length. The form is required to allow electronic submission from the submitting provider to the health benefit plan.

SB 1216 further requires the TIC to appoint and consult a committee to advise the commissioner upon the practical, technical, and operational aspects of developing the single form. The committee will be composed of an equal number of physicians, other health care providers, hospitals, representatives of health benefit plans, and HHSC representatives. SB 1216 requires that the commissioner consult with the advisory committee as well as take into consideration any widely used national standards in the development of the form. Biennial review of the form is required.

Upon adoption, the use of the single form for prior authorization by all health benefit plans is required.

SB 644 applies to health benefit plans including an insurance company, group hospital service corporations, fraternal benefit societies, stipulated premium companies, reciprocal exchanges, HMO's, multiple employer welfare arrangements, non-profit health corporations, coverage for school districts, government risk pools, basic coverage plans, primary care coverage plans, worker's compensation coverage, CHIP, Medicaid, and Medicare. The bill does not apply to benefit plans covering only a specific disease, accidental death and dismemberment insurance, wage replacement insurance, credit insurance, dental insurance, hospitalization only insurance, indemnity plans, Medicare supplemental insurance, motor vehicle insurance, and long term care insurance.

The TIC is required to prescribe a standard form by January 1, 2015, and use of the form is required beginning September 1, 2015.

**Impact:** UT System institutions and employees providing health care services should be aware of the requirement to use and submit the standard form prescribed by the TIC to request prior authorization of health care services beginning September 1, 2015. UT System institutions and employees providing health care services should also be aware of the ability to submit the required from electronically. To the extent UT System institutions participate in or operate health benefit plans, they should be aware of the requirement to use the prescribed form.

**Effective:** September 1, 2013

Tim Boughal

[SB 1609](#) by Schwertner and Kolkhorst, et al.

Relating to the training of employees of certain covered entities.

Health & Safety Code Section 181.101 currently requires state agencies and other entities that maintain and use protected health information, as that term is defined by HIPAA, to provide training to all employees regarding state and federal laws concerning the agency's particular course of business and each employee's scope of employment within sixty (60) days of their hire day. (HIPAA defines "protected health information" as information created or received by a health care provider, health plan, employer, or health care clearinghouse; that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual; or is reasonably believed to be used to identify the individual. However, such information contained in education records covered by FERPA, treatment records of students maintained by a health care provider, employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than 50 years is exempt from the definition of "protected health information.")

This bill changes the time period in which the training must be provided from within sixty (60) days of their hire date to within ninety (90) days of their hire date. It also omits the requirement that subsequent training be provided to all employees every two years. Instead, training must be provided within a reasonable time not to exceed one year after a material change in state or federal law that affects an employee's duties. Finally, it changes the verification requirements. Affected agencies must now obtain and maintain proof of completion of the training, rather than proof of attendance at the training, from each affected employee.

**Impact:** Under Chapter 181 of the Health & Safety Code, state agencies that are Covered Entities subject to HIPAA are permitted to comply with the specific requirements of HIPAA, rather than the requirements of Chapter 181. This means that System institutions that are HIPAA Covered Entities and whose research and other offices are part of that Covered Entity are exempt from the training requirements required by this bill. Institutions that maintain protected health information in offices or areas that are not subject to HIPAA, and are therefore required to comply with Chapter 181, will

benefit from the increased flexibility this bill will provide in complying with the training requirements.

**Effective:** June 14, 2013

Barbara Holthaus

**SB 1610** by Schwertner and Kolkhorst, et al.

Relating to the notification of individuals following a breach of security of computerized data.

SB 1610 clarifies that breach notices provided under the state law breach notification statute, Chapter 521 of the Business & Commerce Code, need only be provide to the affected individuals at their last known address. It allows affected entities to comply with the reporting requirements of the statute, if there are individuals affected by the breach who are residents of another state, by following the statute or by following the applicable breach notification law of the state where the individual resides.

**Impact:** System institutions should already be providing breach notices required by Chapter 521 by using the last known address on file for each affected individually and should also be providing the same notices to all individuals regardless of their state of residency. System institutions may want to review their internal breach compliance processes to ensure they are in compliance with the bill.

**Effective:** June 14, 2013

Barbara Holthaus

### **Payment for Medical Services**

**HB 1803** by Callegari and Huffman

Relating to controlled substance registration by physicians and the regulation of persons engaged in pain management; changing the payment schedule for a fee.

Physicians in Texas are required to be registered by the Texas Medical Board (TMB) in order to practice medicine and if prescribing medications, they must also register with the Texas Department of Public Safety (DPS) in compliance with the Texas Controlled Substances Act. This bill aligns the renewal dates for a physician's license to practice medicine and the controlled substance registration and authorizes one agency, the TMB, to collect fees and to issue both the license and the registration. An unexpired controlled substance registration held on the effective date of the Act, will expire on the date the physician's registration permit expires.

At least sixty days prior to the expiration of a physician's registration permit, the TMB must provide notice of a registration permit renewal application and renewal notice for

the controlled substance registration. The physician must be able to submit the required information for renewal as well as the renewal fee electronically.

Regarding pain management clinics, the bill requires that an exemption from licensing of a clinic is applicable only for physicians and advanced practice nurses who treat patients in their area of specialty and who personally use other forms of treatment with the issuance of a prescription for the majority of patient. The bill specifically states that a person who owns or operates a pain management clinic is engaged in the practice of medicine.

**Impact:** This bill would impact all physicians that maintain a registration permit to practice medicine and a controlled substances permit, making it easier to renew these registrations simultaneously.

**Effective:** January 1, 2014

Melodie Krane

[HB 2929](#) by Sheets and Deuell

Relating to health benefit plan coverage for brain injury.

This bill prohibits health insurance plans, including the UT System employer health plan, UT SELECT, from placing limits on the number of days of treatment the plan will cover for post-acute treatment of acquired traumatic brain injuries. It requires the plan to provide coverage beyond the terms of coverage provided by the plan, including the number of days available for post-acute care, if the plan member's physician determines that additional care is medically necessary.

It also prohibits a health plan from refusing to contract with, or approve admission to, a facility that holds accreditation from the Commission on Accreditation of Rehabilitation Facilities (CARF). It also authorizes the commissioner of insurance to adopt rules requiring insurers to contract only with licensed assisted living facilities that are accredited by CARF or a similar entity for the provision of post-acute care treatment (other than custodial care) that is covered by a health plan offered by the insurer.

**Impact:** UT SELECT will be required to increase coverage as required by the bill. Depending on future claims experience this could represent a substantial cost to the plan. If UT institutions provide this type of care, it may make it possible them to recoup expenses related to such treatment from patients that have health insurance.

**Effective:** September 1, 2013

Barbara Holthaus

[SB 822](#) by Schwertner and Eiland

Relating to the regulation of certain health care provider network contract arrangements; providing an administrative penalty; authorizing a fee.

SB 822 provides for the regulation of health care provider network contract arrangements under the Insurance Code by adding a new Chapter 1458 Provider Network Contracts to Subtitle F (Physicians and Health Care Providers) as follows:

- Registration with the Department of Insurance for currently unlicensed third-party contracting entities is required not later than 30 days after beginning to operate as a contracting entity. Disclosures must include organizational structure, organizational charts and affiliate relationships. Applications for exemption are required by contracting entities holding a certificate of authority to engage in the business of insurance or that operate a HMO. Applications for exemption must be accompanied by a list of the contracting entities' affiliates and updated annually. Affiliates of licensed insurers and HMOs are generally exempt from registration.
- Criteria for network and discount access, contract termination, the rights and responsibilities of contracting entities and disclosure of any third-party access to the providers' discounts are established.
- Contracting entities are prohibited from selling, leasing or transferring information regarding the payment or reimbursement terms of the provider network contract without the provider's express authority.
- The provider network contract must require that on the request of the provider, the contracting entity will provide the information necessary to determine whether a particular person has been authorized to access the provider's health care services and contractual discounts.
- To be enforceable against a provider, a provider network contract must specify separate fee schedules for each line of insurance business such as preferred and exclusive provider benefit plans, HMO plans, Medicare Advantage, Medicaid managed care and CHIP.
- Providers are broadly defined as including a physician, professional association of physicians, a legal entity authorized to practice medicine, a non-profit health corporation certified under Chapter 162 of the Occupations Code by the Texas Medical Board, a physician-hospital organization that acts as an administrator for a provider to facilitate participation in health care contracts or a hospital licensed under Chapter 241 of the Health and Safety Code. Physician-hospital organizations that lease or rent their network to a third party are not included in the definition of provider.
- A contracting entity that violates this chapter is subject to administrative sanction or penalty under the Insurance Code.

- These changes in law apply only to provider network contracts entered into or renewed on or after September 1, 2013.

**Impact:** To the extent that UT System health institutions and providers, other than hospitals, operate or participate in health care provider network contract arrangements, they are subject to these new provisions. UT System hospitals are not licensed under Chapter 241 and are, therefore, not included.

**Effective:** September 1, 2013

Allene Evans

**SB 872** by Deuell and Coleman

Relating to county expenditures for certain health care services.

SB 872 allows a county to credit an intergovernmental transfer to the state toward eligibility for state assistance when the transfer is made to provide health care services as part of the Texas Healthcare Transformation and Quality Improvement Program waiver.

SB 872 allows a county to credit intergovernmental transfers toward eligibility for state assistance that do not exceed 4% of the county's general revenue levy in any fiscal year if the commissioner's court determines the expenditure fulfills the county's obligations to provide indigent health care, the amount of care available through participation in the waiver is sufficient to meet the requirements of Chapter 61 of the Texas Health and Safety Code, and the county receives periodic payments from health care providers that receive supplemental or incentive payments under the Texas Healthcare Transformation and Quality Improvement Program waiver.

The Department of State Health Services is required to submit a report to the Legislature regarding the effects of SB 872 by December 1, 2014.

**Impact:** Any UT System institutions which provide periodic payments to county indigent health care programs in order to receive supplemental or incentive payments should be aware of the ability for a county to credit such payments for intergovernmental transfers.

**Effective:** June 14, 2013

Tim Boughal

**SB 874** by Hegar and Sanford

Relating to the operation of health care sharing ministries.

SB 874 establishes guidelines to be followed by a health care sharing ministry in order to be legally recognized as such. It requires the ministry to give notice to participants that participants remain personally liable for medical charges, regardless of participation.

These ministries are not considered health insurance plans if they follow the guidelines. If the ministry complies with the guidelines, it will not be engaging in the business of insurance and will not be subject to enumerated statutes otherwise applicable to entities engaged in the business of insurance.

**Impact:** The bill should assist System health care providers when treating individuals who participate in plans that follow the guidelines, by providing statutory support for the patients' personal liability, regardless of participation in the plan, and the providers' ability to refuse to file with the plan. All health institutions and academic health clinics should be notified of this change in law, but no action is required on their part.

**Effective:** June 14, 2013

Traci L. Cotton

[SB 1057](#) by Nelson and Zerwas

Relating to information about private health care insurance coverage and the health insurance exchange for individuals applying for certain Department of State Health Services health or mental health benefits, services, and assistance.

- SB 1057 amends the Health and Safety Code to add a provision prohibiting the Department of State Health Services (DSHS) from providing health or mental health programs or services unless there is an attestation that the individual does not have access to private health insurance coverage providing those service benefits.
- The agency may waive the prohibition if it determines that the program or service is necessary during a crisis or emergency.
- If an individual has access to private health care insurance, the covered individual must provide the information and authorization necessary for DSHS to submit a claim for reimbursement to the insurer.
- The agency is to distribute informational materials to applicants with an income above 100 percent of the federal poverty level regarding coverage and subsidies available under a health insurance exchange established under the Affordable Care Act.
- The agency must apply for any necessary federal waiver or authorization. Implementation may be delayed until the waiver or authorization is granted. The attestation form is to be prescribed as soon as practicable and implementing rules are to be adopted.

**Impact:** There is no direct impact on UT System health institutions or providers except to the extent that patient care that would otherwise be promptly available under health or mental health programs may be delayed.

**Effective:** June 14, 2013

Allene Evans

**SB 1221** by Paxton and Smithee

Relating to use of a Medicaid-based fee schedule for reimbursement of services under a contract between a health care provider and certain health benefit plans.

SB 1221 amends the Insurance Code to prohibit insurance companies, HMOs or preferred provider organizations from imposing Medicaid-based fee schedules on health care providers for services under a commercial insurance plan unless there is conspicuous disclosure and signed consent. This change in law applies to contracts entered into or renewed on or after June 14, 2013.

**Impact:** To the extent that commercial insurance plans seek to impose Medicaid-based fee schedules on UT System health care institutions and providers, such fee schedules could only be imposed with disclosure and consent.

**Effective:** June 14, 2013

Allene Evans

**SB 1484** by Watson, et al. and Gonzales, Larry, et al.

Relating to health benefit plan coverage for enrollees diagnosed with autism spectrum disorder.

This bill amends Chapter 1355 of the Texas Insurance Code, to remove the age limit currently associated with coverage requirements for health benefit plan participants diagnosed with autism spectrum disorder, effectively shifting the current requirements related to autism spectrum disorder to be applicable to any health benefit plan enrollee regardless of age.

**Impact:** This bill will not impact the UT System employee health plan, which is not subject to Chapter 1355 of the Insurance Code. It may increase the health insurance coverage available to patients that seek treatment for autism related disorders from UT System institutions. This includes, but may not be limited to, the Callier Center for Speech and Hearing Disorders at UT Dallas, which relies on insurance billing for revenue.

**Effective:** September 1, 2013

Barbara Holthaus

**SB 1623** by Hinojosa and Guerra

Relating to the creation and operations of health care funding districts in certain counties on the Texas-Mexico border.

SB 1623 mandates the creation of a local provider participation fund (“fund”) by the county commissioner’s court consisting of revenue from the following sources:

- a payment imposed on outpatient hospital visits (up to \$100 for each outpatient hospital visit) to an institutional health care provider (defined in the statute as a nonpublic hospital licensed under Chapter 241), including penalties and interest;
- money received from HHSC directly related to an intergovernmental transfer (IGT) from the district to the state for the provision of the nonfederal share of Medicaid supplemental payment program payments; and
- the earnings on the fund.

SB 1623 limits participation in the funds to:

- counties with 500,000 or more which are adjacent to 2 or more counties with 50,000 people;
- counties with 350,000 or more which are adjacent to any of the counties in 1); and
- counties with less than 300,000 individuals containing a municipality with at least 200,000 people.

This fund may only be used for specified purposes, among which are:

- payment of the nonfederal share of a Medicaid supplemental payment program; and
- payment to a district tax payer (i.e., a hospital) for the proportionate share of money received by the district from HHSC directly related to an IGT from the district for purposes of providing the nonfederal share of payments for the Medicaid supplemental payment program to which the taxpayer is entitled.

The districts can only use the money in the fund to pay the nonfederal share of a Medicaid supplemental payment program after they have received assurance from HHSC that the nonfederal share of the Medicaid supplemental payment transferred for IGT purposes will be returned to the district. The fund cannot be used to expand Medicaid eligibility. Within 15 days of receiving return of the IGT from HHSC, the district must transfer to each taxpayer (i.e., hospital) the proportionate share to which they are entitled.

In addition to the establishment of the fund, the bill also makes the following changes to the district operations:

- the requirement above of the county commissioner and county judge to serve as commission members is mandated as an additional duty of the respective office;
- removes the prohibition against spending any money without an affirmative vote of a majority of the members of the commission;
- requires the commission to hold a public hearing to solely allow a representative of a paying hospital to appear and be heard regarding mandatory payments required by the district;
- requires mandatory payments by paying hospitals into the fund; and
- repeals numerous sections of the current statute: §288.003 – relating to duration of the district (sunset provision); §288.004 – makes the district a political subdivision of the state; §288.052 – lists of qualification of members of commission; §288.053 – terms of commission members; §288.054 – filling of vacancy on commission; §288.055 – officers; §288.056 – compensation of commission members (not previously allowed) and actual expenses reimbursement which was allowed; §288.057 – permits commission to hire attorney, financial advisor and bookkeeper or contract for services; §288.058 – maintenance of records and public inspection of records; §288.103 – election required for certain expenditures; §288.104(b) – procedures required for majority vote of commission for expenditures and election required for certain expenditures; §288.105 – requirement of purchasing and accounting procedures; §288.107 – authority to sue and be sued; §288.153 – requirement of annual audit; and §288.206 – election required to amend any provisions or procedures.

SB 1623 includes an expiration provision requiring the abolishment of any district created on December 31, 2016. Upon abolishment, SB 1623 requires the commissioner's court to refund to each paying hospital the proportionate share of any money remaining in the local provider participation fund created by the district.

**Impact:** UT Health Institutions providing care to individuals in the Texas-Mexico border region should be aware of the ability of a district health care fund to provide funding to health care providers within any district. This bill provides a possible revenue stream for additional funding to any UT System institution which provides care to Medicaid recipients in eligible counties.

**Effective:** June 14, 2013

Tim Boughal

[\*\*SB 1795\*\*](#) by Watson and Guillen

Relating to the regulation of navigators for health benefit exchanges.

SB 1795 adds Chapter 4154 to the Insurance Code to create a navigator program for federal health benefit exchanges as described in Section 1311 of the Patient Protection

and Affordable Care Act and the final regulations issued by HHS. The purpose of the navigator program is to provide consumers with information about coverage available through a federal ACA health care insurance exchange, to provide information about premium tax credits and cost-sharing reductions, explain the interaction with Medicaid and CHIP and to facilitate enrollment in qualified health plans.

SB 1795 provides for a state registration system for navigators, requires the Insurance Commissioner to determine if federal regulations are sufficient, and sets the minimum standards for federal rules as well as for state rules to be adopted if the federal rules are found to be insufficient.

Navigators may not engage in deceptive or misleading advertising and may not suggest the professional superiority of the navigator. Navigators may not receive compensation from insurers except if licensed as an agent. This chapter does not apply to licensed agents, health insurance counselors or insurance companies.

**Impact:** To the extent access to health coverage is improved by navigator program, the effect on UT System health institutions and providers will be to increase billings and revenue.

**Effective:** September 1, 2013

Allene Evans

### **Medicaid and Indigent Health Care**

**[SB 7](#)** by Nelson and Raymond

Relating to improving the delivery and quality of certain health and human services, including the delivery and quality of Medicaid acute care services and long-term services and supports.

SB 7 broadly revises delivery methods under the Medicaid and CHIP programs focusing upon reducing costs, improving efficiency, increasing coordination between long term and acute care services, and developing strategies to prevent use of the highest cost health services by Medicaid and CHIP recipients. The bill makes changes in the following areas:

- Redesign of Services to Individuals with Intellectual and Developmental Disabilities:
- HHSC and DADS are to jointly implement a system for acute and long term care services focusing on improved cost-efficiency, access to services, promoting person centered planning, providing appropriate services, periodic assessments of individual needs, coordination of services, outcomes monitoring, individual budgeting, and high-quality care.

- Pilot programs to test service delivery models using a managed care strategy based on capitation are to be implemented by September 1, 2016 and operate until September 1, 2018.
- HHSC must provide Medicaid benefits for these individuals through both the STAR Medicaid managed care program or most appropriate capitated managed care program model and the STAR + PLUS Medicaid managed care program or most appropriate integrated capitated managed care model.
- For those receiving long term care services under the Texas Home Living Waiver Program, services are to be transitioned to STAR + PLUS Medicaid managed care or most appropriate integrated managed care model by September 1, 2017, with extended dates for those living in an ICF-MR facility and other groups by September 1, 2020.
- Care must be individualized. Prior authorization is required for placement in a group home.
- A variety of alternative housing arrangements are to be developed by HHSC.
- Providers, family members, caregivers and first responders are to be provided training for those with behavioral needs.
- HHSC is required to establish the Intellectual and Developmental Disability System Redesign Advisory Committee to assist with the implementation of the re-design of the acute care services and long-term services and support system redesign mandated by the bill. Annual reporting is due to the legislature by December 1 of each year to provide information regarding the system re-design implementation and to provide recommendation to facilitate the implementation of the re-design.

#### Medicaid Managed Care Expansion:

- Acute care services are required to be provided through the most cost-effective Medicaid capitated managed care model.
- HHSC must:
  - expand STAR + PLUS Medicaid managed care to all areas of the state;
  - provide benefits to recipients in nursing facilities through the STAR + PLUS Medicaid managed care program;
  - establish a mandatory STAR KIDS capitated managed care program for medical assistance benefits to children not enrolled in STAR + PLUS Medicaid managed care program; and

- for children who are receiving benefits under the medically dependent children waiver program, provide assistance through the STAR KIDS managed care program (established above) while ensuring that all or a portion of the current benefits be provided.
- Requires contracts between managed care organizations and HHSC contain requirements that:
  - payments to providers within 45 days of receipt, within 30 days for long term care costs outside of a long term care facility, and within 10 days for long term care costs in a long term care facility;
  - managed care organizations implement a system for tracking and resolving all provider appeals of payment claims;
  - submit a comprehensive plan describing how the organization's provider network will provide sufficient access to preventive care, primary care, specialty care, urgent care, chronic care, long term services, nursing services, and therapy services; and
  - the organization must not implement significant, non-negotiated, wholesale reductions to provider reimbursement rates.

#### Payments Based on Quality and Outcomes:

- Incentive programs and rate-setting strategies should focus on quality care, payment reform and outcomes.
- For the Medicaid and CHIP program, managed care organizations must develop quality-based payment systems for compensating physicians and other health care providers.
- For the Medicaid and CHIP programs, outpatient hospital reimbursement systems must be converted to a prospective payment system by September 1, 2013.
- Performance measures may be used to adjust premiums to managed care organizations participating in Medicaid and CHIP.
- For Medicaid long-term care services, quality-based payment systems may be developed to improve care and reduce unnecessary services.

#### Other Provisions:

- Any portion of a retroactive fee-for-services payment under Medicaid may be paid in the premium to a managed care organization, even if prior to Medicaid or managed care enrollment.

- For children in the Medicaid program, HHSC shall adopt rules for implementation of a premium to be paid by the child’s parent or legal guardian.
- HHSC is required to establish a program to provide a confidential report to each hospital participating in CHIP or Medicaid regarding the hospital’s performance with respect to each potentially preventable event or complication.
- Allows local mental health authority to use money appropriated under section 115 to ensure the provision of assessment, crisis, intensive, and comprehensive services for mental health disorders within the DSM-5 including major depressive disorder, post-traumatic stress disorder, schizoaffective disorder, obsessive compulsive disorder, anxiety disorder, delusional disorder, eating disorders, or other diagnosed mental disorders.

**Impact:** UT System institutions should be aware that this bill contains broad changes to the current payment mechanisms in Medicaid and CHIP, with substantial likelihood to significantly impact revenue generated by the UT System institutions. Each UT System institution will need to assess the impact of these changes to the institution’s revenue stream. All billing processes will also be affected once HHSC adopts rules and begins implementation.

**Effective:** January 1, 2014

Tim Boughal

[SB 58](#) by Nelson and Zerwas, et al.

Relating to the delivery of and reporting on mental health, behavioral health, substance abuse, and certain other services.

SB 58 directs the Health and Human Services Commission (HHSC) to integrate behavioral health services with physical health services provided to Medicaid-eligible persons. In addition, managed health care organizations contracting with HHSC must develop a network of behavioral health providers to provide services to adults and children with serious mental illness and emotional issues. Toward this end, HHSC is to establish two home pilot programs for persons with both a serious mental illness and a chronic health condition to determine its cost effectiveness and benefit. In addition, the Department of State Health Services (DSHS) is required to make a maximum of five grants to community collaboratives addressing homelessness and mental illness in order to establish outcomes which can be evaluated by a neutral third party. DSHS and HHSC together must establish and maintain a public reporting system of performance and outcome measures of community mental health and substance abuse services

**Impact:** This legislation will impact those health care institutions treating Medicaid-eligible persons by expanding required health care services to include the provision of care for serious mental illness and emotional issues.

**Effective:** September 1, 2013

Chuck Johnstone

**SB 348** by Schwertner and Kolkhorst

Relating to a utilization review process for managed care organizations participating in the STAR + PLUS Medicaid managed care program.

SB 348 amends the Government Code by adding section 533.00281 to require utilization review of managed care organizations participating in the STAR+PLUS Medicaid managed care program by the Health and Human Services Commission's Office of Contract Management.

- The Office of Contract Management shall determine the topics of review but must include investigation of the procedures for determination of recipient enrollment in the home and community-based services program, including the conduct of functional assessments.
- The Office of Contract Management must review every participating managed care organization by August 31, 2015. After the initial review, the Office of Contract Management could develop a risk-based assessment process to use in determining which entities to review in the future.
- HHSC and its Office of Contract Management must provide an annual report to the appropriate Senate and House standing committees summarizing the results of the reviews, providing analysis of errors committed by each managed care organization and making recommendations for improving program efficiency.
- Application for any necessary federal waiver or authorization shall be made and implementation delayed until any necessary authority is granted.
- If utilization review results in a determination to recoup money from a managed care organization, a service provider who contracts with the managed care organization may not be held liable for the good faith provision of services authorized by the managed care organization.

**Impact:** To the extent that UT System health institutions contract with STAR+PLUS managed care organizations, they may be affected by operational changes resulting from increased utilization review.

**Effective:** May 18, 2013

Allene Evans

**SB 421** by Zaffirini and Naishtat

Relating to the Texas System of Care and the development of local mental health systems of care for certain children.

SB 421 broadens the Health and Human Services Commission's (HHSC) responsibility for oversight of the state system of mental health care for minors. HHSC is required to form a consortium with responsibility for oversight of mental health care for minors and to develop local mental health systems of care for minors in inpatient mental hospital/facility settings as well as those who are at risk of being placed in a more restrictive environment to receive mental health services. The consortium is required to include representatives from the Department of State Health Services, the Department of Family and Protective Services, HHSC's Medicaid Program, the Texas Education Agency, the Texas Juvenile Justice Department, the Texas Correctional Office on Offenders with Medical or Mental Impairments, one youth with serious emotional disturbance who has received mental health services, and a family member of a youth who has received mental health services.

The consortium is required to maintain and develop a comprehensive plan for delivery of mental health services to a minor and the minor's family within a system of care framework, implement strategies to expand the use of system of care practices, identify local, state, and federal funding to finance infrastructure to support system of care efforts, and develop an evaluation system to measure outcomes. Bi-annual reports from the consortium are required to be submitted to the legislature and Council on Children and Families evaluating outcomes and including recommendations to increase access, methods to increase capacity, use of cross system data to make informed decisions, and strategies to maximize funding.

SB 421 allows HHSC to establish rules for the use of the request for proposal process to implement local care systems as funding is available, rules to evaluate the effectiveness of local care systems, rules emphasizing community, strength based, family driven, youth guided, services, and rules to establish service outcome goals. HHSC is directed to develop criteria to evaluate proposals including: emphasis on community, strengths based, family driven, youth guided programs, service outcome goals for communities, and requiring demonstration to collect data for minors receiving care in inpatient settings focused on reducing the rate of placement in inpatient settings.

Joint monitoring by HHSC and the Texas Department of State Health Services is required to monitor the progress of grant communities as well as monitor cost avoidance and net savings resulting from implementation of the local system of care.

The bill repeals sections 251.253, 531.254, 531.255(b)-(d), 531.256, and 531.258 relating the existing pilot program for local expansion of mental health programs and grants for youth programs.

**Impact:** UT System institutions participating in the state system of mental care for minors should be aware of the broadened oversight of mental health care for minors and

the structural changes to the mental health care delivery system. UT System institutions should also be aware of the increased data collection and the establishment of new local systems of mental health care through grants.

**Effective:** September 1, 2013

Tim Boughal

[SB 872](#) by Deuell and Coleman

Relating to county expenditures for certain health care services.

SB 872 allows a county to credit an intergovernmental transfer to the state toward eligibility for state assistance when the transfer is made to provide health care services as part of the Texas Healthcare Transformation and Quality Improvement Program waiver.

SB 872 allows a county to credit intergovernmental transfers toward eligibility for state assistance that do not exceed 4% of the county's general revenue levy in any fiscal year if the commissioner's court determines the expenditure fulfills the county's obligations to provide indigent health care, the amount of care available through participation in the waiver is sufficient to meet the requirements of Chapter 61 of the Texas Health and Safety Code, and the county receives periodic payments from health care providers that receive supplemental or incentive payments under the Texas Healthcare Transformation and Quality Improvement Program waiver.

The Department of State Health Services is required to submit a report to the Legislature regarding the effects of SB 872 by December 1, 2014.

**Impact:** Any UT System institutions which provide periodic payments to county indigent health care programs in order to receive supplemental or incentive payments should be aware of the ability for a county to credit such payments for intergovernmental transfers.

**Effective:** June 14, 2013

Tim Boughal

[SB 1150](#) by Hinojosa and Guerra, et al.

Relating to a provider protection plan that ensures efficiency and reduces administrative burdens on providers participating in a Medicaid managed care model or arrangement.

SB 1150 adds protections for Medicaid health care providers including prompt payment and reimbursement, prompt credentialing and elimination of "red tape" as follows:

- The provider protection plan must provide for prompt payment and prompt and accurate adjudication of claims through provider education on claims submissions

and acceptance of uniform forms through an electronic portal including HCFA Forms 1500 and UB-92.

- Electronic processes, including the use of an Internet portal, must be established for submission of claims, prior authorization requests, appeals, clinical data and other required documentation and to obtain electronic remittance advice, explanation of benefit statements and other standardized reports.
- As soon as possible, but not later than September 1, 2014, the Health and Human Services Commission shall implement the required provider protection plan. Any necessary federal waiver or authorization shall be requested and implementation delayed until such waiver or authorization is obtained.

**Impact:** To the extent that UT System health institutions and providers participate in Medicaid managed care plans, operational processes should be improved.

**Effective:** September 1, 2013

Allene Evans

**SB 1175** by Deuell and Guillen

Relating to the establishment of a reuse program for durable medical equipment provided to recipients under the Medicaid program.

SB 1175 requires the Health and Human Services Commission (HHSC) to evaluate the cost effectiveness and potentially establish a program to create a durable medical equipment reuse program for Medicaid recipients. The bill defines durable medical equipment to include equipment, including repair and replacement parts, which can withstand repeated use, is primarily used for a medical purpose, generally not useful to a person in the absence of illness or injury, and is safe for use in the home.

If HHSC determines that a durable medical equipment program is cost effective, SB 1175 requires HHSC to promulgate rules establishing the program. HHSC is required to seek public comment for any rules.

The program is required to ensure that reused equipment meets all necessary standards of functionality and sanitation.

The bill requires the executive commissioner of HHSC to create rules governing the durable medical reuse program for Medicaid recipients including provisions to ensure reused equipment meets the required standards of functionality and sanitation. The bill requires HHSC to adopt rules necessary to implement the program by September 1, 2014.

The bill provides that it does not waive any immunity from liability of HHSC or create a cause of action for providing reused durable medical equipment.

The bill requires HHSC to seek any federal waivers necessary to implement the provisions of the act.

**Impact:** UT System institutions providing care to Medicaid recipients should be aware of the potential for HHSC to establish a durable medical equipment reuse program in directing patients to sources for necessary durable medical equipment. This program is likely to be beneficial to Medicaid patients at UT health institutions by ensuring they have the ability to receive necessary durable medical equipment.

**Effective:** June 14, 2013

Tim Boughal

**SB 1221** by Paxton and Smithee

Relating to use of a Medicaid-based fee schedule for reimbursement of services under a contract between a health care provider and certain health benefit plans.

SB 1221 amends the Insurance Code to prohibit insurance companies, HMOs or preferred provider organizations from imposing Medicaid-based fee schedules on health care providers for services under a commercial insurance plan unless there is conspicuous disclosure and signed consent. This change in law applies to contracts entered into or renewed on or after June 14, 2013.

**Impact:** To the extent that commercial insurance plans seek to impose Medicaid-based fee schedules on UT System health care institutions and providers, such fee schedules could only be imposed with disclosure and consent.

**Effective:** June 14, 2013

Allene Evans

**SB 1542** by Van de Putte and Zerwas

Relating to clinical initiatives to improve the quality of care and cost-effectiveness of the Medicaid program.

SB 1542 directs the Health and Human Services Commission (HHSC) to develop and implement a quality improvement process to receive and conduct analysis of clinical initiative suggestions designed to improve the quality and cost effectiveness of care provided under the Medicaid Program. HHSC is required to solicit and accept suggestions from state legislators, state government officers, the executive commissioner of HHSC, the commissioner of the Texas Department of Aging and Disability Services, the commissioner of the Texas Department of State Health Services, the commissioner of the Texas Department of Family and Protective Services, the commissioner of the Texas Department of Assistive and Rehabilitative Services, the physician payment advisory committee, and the Electronic Health Information Exchange System Advisory Committee. The bill prohibits accepting suggestions which are the subject of clinical

trials or expands a health care provider's scope of practice beyond the law governing such practices.

HHSC is required to analyze and issue a final report for initiatives that implement evidence based protocols in the treatment of sepsis and septicemia, and initiatives that would authorize Medicaid to provide blood based allergy testing for patients with persistent asthma to develop a treatment strategy.

SB 1542 requires HHSC to develop and implement an evaluation process for submission, analysis, and approval of clinical initiatives. The process requires suggestions for the clinical initiative to be submitted to the state Medicaid director, be published on the internet within 30 days after the initiative is received, provide a formal public comment period of at least 30 days, require HHSC employees to perform an analysis of each suggested initiative, and require development and publication of a final report for each suggested clinical initiative within 180 days. The bill requires that analysis for the reports include a review of public comments, available clinical research and historical utilization, published medical literature related to the initiative, any adoption of the initiative by other medical groups, whether the initiative has been implemented under Medicare or any other states' medical assistance or operated health program, the results of reports, research, pilot programs, or clinical studies by institutes of higher education, governmental entities, and think tanks, the impact the initiative would have on the Medicaid program if implemented with estimates of recipients and cost savings, and any statutory barriers to implementation.

HHSC is required to prepare a final report based on the analysis of a clinical initiative including a final determination on feasibility, likely impact on quality of the Medicaid program, anticipated cost savings, a summary of public comments including opposition, identification of statutory barriers, and if the initiative is not implemented, an explanation of the decision not to implement. The bill requires the final reports to be made available on the website developed by HHSC for clinical initiatives.

Finally, upon a finding that the initiative is cost effective and will improve the quality of health care, the bill requires HHSC to implement the initiative or submit a report to the legislature detailing the change in law necessary for implementation. Alternatively, the bill requires HHSC not to implement an initiative if it is found not to be cost effective or unlikely to improve the quality of health care.

HHSC is required to conduct an analysis and submit a final report on the required evidence based protocols in the treatment of sepsis and septicemia, and initiatives that would authorize Medicaid to provide blood based allergy testing for patients with persistent asthma by January 1, 2014.

**Impact:** UT System institutions should be aware of the clinical initiatives program, the required research of evidence based protocols in the treatment of sepsis and septicemia and initiatives that would authorize Medicaid to provide blood based allergy testing for patients with persistent asthma, the ability to submit initiatives to various state

agencies for possible consideration, and the possibility that clinical initiatives may be adopted which would require compliance for participation in Medicaid programs.

**Effective:** June 14, 2013

Tim Boughal

## **Public Health**

**HB 489** by Menéndez and Uresti

Relating to rights and responsibilities of persons with disabilities, including with respect to the use of service animals that provide assistance to those persons; providing penalties.

First, the bill expands the definition of “persons with a disability” to include persons with an intellectual or developmental disability, or post-traumatic stress disorder.

Second, if a person with a disability wishes to enter a public facility with a service animal, the bill forbids that person from being asked about (or required to provide) the animal’s qualifications or certifications before being admitted to the facility, unless the request is made simply to understand the type of assistance the animal provides.

Third, if a person wishes to enter a facility with a service animal, but the person’s disability is not readily apparent, the bill allows a staff member or manager of the facility to ask the person if animal is required because the person has a disability, and to ask what type of work or task the animal is trained to perform.

Finally, the bill caps at \$300 the fine that may be assessed against persons who violate this law, and also requires violators to perform 30 hours of community service for a government or non-profit entity that primarily serves persons who are visually-impaired or have other disabilities.

**Impact:** UT institutions should train all employees charged with safety, security and facility access control about these changes. Normally, this group will include police officers, security guards/public safety officers, parking attendants, dormitory resident assistants, dining hall/snack bar employees, receptionists and other front-desk personnel. In some instances, UT institutions will need to revise their Handbooks of Operating Procedures or other written policies to clarify the questions that employees may ask persons about their service animals.

**Effective:** January 1, 2014

Omar A. Syed

[HB 740](#) by Crownover, et al. and Deuell

Relating to newborn screening for critical congenital heart disease and other disorders.

HB 740 charges the Department of State Health Services (DSHS) with performing newborn screening for disorders listed as core or secondary conditions at birthing facilities providing care to newborns, provided funding is available and DSHS has reviewed each screening test's necessity and cost effectiveness.

In particular, HB 740 expanded Texas' standard newborn screening panel to require testing for critical congenital heart disease (CCHD) with testing that complies with DSHS procedures and standards.

**Impact:** The Department of State Health Services will require that health care component institutions and practitioners perform testing on newborns for critical congenital heart disease and other disorders provided the testing is necessary and cost effective.

**Effective:** September 1, 2013

Chuck Johnstone

[HB 746](#) by Ashby and Schwertner

Relating to the registration of volunteer health practitioners and the services of volunteer health practitioners during disasters.

HB 746 charges the Texas Division of Emergency Management with regulating an in-state and out-of-state volunteer health registration program for practitioners in the event of an emergency declaration. Those volunteers must be registered with the volunteer health practitioner registration system administered by the Department of State Health Services. It requires proof of licensing and good standing as well as a criminal history background check.

**Impact:** Volunteer health practitioners will now have a means of registering to be volunteers for emergencies declared both within and outside of Texas.

**Effective:** September 1, 2013

Chuck Johnstone

[HB 748](#) by Raymond and Nelson

Relating to a waiver allowing the Department of Family and Protective Services to use certain federal funds to test innovation strategies in child welfare programs.

HB 748 amends the Government Code by adding section 531.0881 to require the Department of Family and Protective Services to apply for and actively pursue a waiver

as authorized by the Child and Family Services Improvement and Innovation Act to allow the use of federal funds to conduct demonstration projects to:

- reduce time in foster care and promote successful transitions to adulthood;
- increase positive outcomes for infants, children and families; or
- prevent child abuse and neglect and the reentry into foster care.

This section expires December 31, 2015.

**Impact:** To the extent that UT System institutions might participate in demonstration projects, this is a potential source of teaching and research activity and revenue.

**Effective:** June 14, 2013

Allene Evans

[HB 912](#) by Gooden, et al. and Estes

Relating to images captured by unmanned aircraft and other images and recordings; providing penalties.

HB 912 would enact the Texas Privacy Act (the “Act”). It would define terms, specify exceptions to applicability, and provide for criminal penalties and civil action.

HB 912 defines “image” as any capturing of sound waves, thermal, infrared, ultraviolet, visible light, or other electromagnetic waves, odor, or other conditions existing on or about real property or an individual located on that property.

HB 912 is not applicable in the following circumstances:

HB 912 does not apply to images of real property or an individual on real property captured by an unmanned vehicle or unmanned aircraft for purposes of professional or scholarly research and development on behalf of an institution of higher education. This would include images taken by professors, employees, or students of the institution or people who were under contract with or otherwise acting under the direction or on behalf of the institution.

- HB 912 does not apply to airspace designated as a test site or range authorized by the Federal Aviation Administration for the purpose of integrating unmanned aircraft systems into the national airspace, or to an operation, exercise, or mission of any branch of the U.S. Military.
- HB 912 does not apply to images captured by or for an electric or natural gas utility for operations and maintenance of utility facilities for the purpose of maintaining utility system reliability and integrity; for inspecting utility facilities

to determine repair, maintenance, or replacement needs during and after construction of such facilities; for assessing vegetation growth for the purpose of maintaining clearances on utility easements; and for utility facility routing and siting for the purpose of providing utility service.

- HB 912 does not apply to images captured with the consent of the individual who owns or lawfully occupies the real property captured in the image.
- HB 912 does not apply to images captured pursuant to a valid search or arrest warrant;
- HB 912 does not apply if the image is captured by a law enforcement authority or a person who is under contract with or otherwise acting under the direction or on behalf of a law enforcement authority: (A) in immediate pursuit of a person law enforcement officers have reasonable suspicion or probable cause to suspect has committed an offense, not including misdemeanors or offenses punishable by a fine only; (B) for the purpose of documenting a crime scene where an offense, not including misdemeanors or offenses punishable by a fine only, has been committed; (C) for the purpose of investigating the scene of a human fatality; a motor vehicle accident causing death or serious bodily injury to a person; or any motor vehicle accident on a state highway or federal interstate or highway; (D) in connection with the search for a missing person; (E) for the purpose of conducting a high-risk tactical operation that poses a threat to human life; or (F) of private property that is generally open to the public where the property owner consents to law enforcement public safety responsibilities.
- HB 912 does not apply if the image is captured by state or local law enforcement authorities, or a person who is under contract with or otherwise acting under the direction or on behalf of state authorities, for the purpose of: (A) surveying the scene of a catastrophe or other damage to determine whether a state of emergency should be declared; (B) preserving public safety, protecting property, or surveying damage or contamination during a lawfully declared state of emergency; or (C) conducting routine air quality sampling and monitoring, as provided by state or local law.
- HB 912 does not apply to an image captured at the scene of a spill, or a suspected spill, of hazardous materials.
- HB 912 does not apply to an image captured for the purpose of fire suppression.
- HB 912 does not apply to images captured for the purpose of rescuing a person whose life or well-being is in imminent danger.
- HB 912 does not apply if the image captured by a Texas licensed real estate broker in connection with the marketing, sale, or financing of real property, provided that no individual is identifiable in the image.

- HB 912 does not apply if an image is captured of real property or a person on real property that is within 25 miles of the United States border;
- HB 912 does not apply if an image is from a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception.
- HB 912 does not apply to an image of public real property or a person on that property;
- HB 912 does not apply if the image is captured by the owner or operator of an oil, gas, water, or other pipeline for the purpose of inspecting, maintaining, or repairing pipelines or other related facilities, and is captured without the intent to conduct surveillance on an individual or real property located in this state.
- HB 912 does not apply in connection with oil pipeline safety and rig protection.
- HB 912 does not apply in connection with port authority surveillance and security.

HB 912 provides for criminal penalties. Pursuant to HB 912, it would be a class C misdemeanor (maximum fine of \$500) to use or authorize the use of an unmanned aircraft to capture an image of an individual or real property with the intent to monitor or conduct surveillance on the individual or real property captured in the image. The term “intent” has the same meaning assigned by Section 6.03 of the Penal Code. It would be a defense to prosecution against this offense that the person destroyed the image as soon as he or she had knowledge that it was captured in violation of the bill, and without disclosing, displaying, or distributing it to a third party.

Pursuant to HB 912, it would also be it would be a Class C misdemeanor (maximum fine of \$500) to possess, display, disclose, distribute, or otherwise use an image captured in violation of the Act. Each image in violation of this offense would be a separate offense. It would be a defense to prosecution for possession if the person destroyed the image as soon as he or she had knowledge that it was captured in violation of the Act.

HB 912 also provides that it would be a Class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) for disclosure, display, distribution, or other use of an image. It would be a defense to disclosure, display, distribution, or other use if the person stopped disclosing, displaying, distributing, or otherwise using the image as soon as they had knowledge that it was captured in violation of the Act.

HB 912 further provides that images captured in violation of the Act, or an image captured by an unmanned aircraft that was incidental to the lawful capturing of an image:

- could not be used as evidence in any criminal or juvenile proceeding, civil action, or administrative proceeding;

- would not be subject to disclosure, inspection, or copying under the Public Information Act; and
- would not be subject to discovery, subpoena, or other legal compulsion for its release.

These images could be disclosed and used as evidence to prove a violation of the Act and would be subject to discovery, subpoena, or other legal compulsion for that purpose.

Finally, HB 912 provides for a civil right of action. Pursuant to the Act, an individual who was the subject of an image — or who owned or who was a tenant of privately owned real property that was the subject of an image — captured, possessed, disclosed, displayed, distributed, or otherwise used in violation of the bill could bring a civil action to enjoin a violation or imminent violation of the bill; and recover a civil penalty of:

- \$5,000 for all images captured in a single episode;
- \$10,000 for disclosure, display, distribution, or other use of any images captured in a single episode; or
- actual damages if the disclosure, display, or distribution of the image was done with malice.

Courts would be required to award court costs and reasonable attorney's fees to the prevailing party. Venue would be governed by the Civil Practice and Remedies Code. The statute of limitations would be two years from the date the image was captured or two years from the date the image was first possessed, displayed, distributed, or otherwise used in violation of the Act.

HB 912 requires that the Department of Public Safety adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in this state.

HB 912 requires that no earlier than January 1 and not later than January 15 of each odd-numbered year, each state law enforcement agency and each county or municipal law enforcement agency located in a county or municipality, as applicable, with a population greater than 150,000 that used or operated an unmanned aircraft during the preceding 24 months issue a written report to the governor, the lieutenant governor, and each member of the legislature and must retain the report for public viewing; and post the report on the law enforcement agency's publicly accessible website, if one exists.

The report must include: the number of times an unmanned aircraft was used, organized by date, time, location, and the types of incidents and types of justification for the use; the number of criminal investigations aided by the use of an unmanned aircraft and a description of how the unmanned aircraft aided each investigation; the number of times an unmanned aircraft was used for a law enforcement operation other than a criminal investigation, the dates and locations of those operations, and a description of how the unmanned aircraft aided each operation; the type of information collected on an

individual, residence, property, or area that was not the subject of a law enforcement operation and the frequency of the collection of this information; and the total cost of acquiring, maintaining, repairing, and operating or otherwise using each unmanned aircraft for the preceding 24 months.

**Impact:** HB 912 has no direct impact on UT System institutions. However, to the extent police departments at each institution utilize unmanned aircrafts, each should be aware of this legislation and its possible impact as it relates to use of such technology.

**Effective:** September 1, 2013

Melissa V. Garcia

**HB 1690** by Fletcher and Nelson

Relating to measures to prevent or control the entry into or spread in this state of certain communicable diseases; providing a penalty.

House Bill 1690 amends the Health and Safety Code to authorize a peace officer to use reasonable force to secure members of a group, a property, and/or a quarantine area subject to an order to implement communicable disease control measures. It also authorizes peace officers to prevent individuals from joining, entering, or leaving the group, property, or quarantine area, as applicable.

The bill also authorizes a judge or magistrate to issue an order allowing an officer to prevent a person under a protective custody order from leaving the facility in which he/she is detained if leaving would cause a public health threat.

The bill also permits such orders to direct officers and/or emergency medical service providers to transport a person subject to an order to a designated inpatient health facility or other suitable facility and authorizes providers to seek reimbursement for the costs of the transport.

The bill also authorizes a judge to order a person whose exposure to the public would jeopardize the health and safety of the public to prepare and appear for a hearing only by teleconference or other isolated means.

Finally, the bill makes it a Class A Misdemeanor for a person under such an order to resist or evade apprehension or transport by a peace officer or for any other person to assist a person under such an order in resisting or evading apprehension or transport.

**Impact:** The bill authorizes the UT System Police to secure, take into custody, or transport persons under such orders and creates a new criminal offense on which officers must be trained. UT System emergency medical service providers may also be required to transport such persons to designated inpatient health facilities. Finally, the bill may subject UT System police and emergency medical service providers to marginally higher risks of disease communication from having to transport and/or detain persons who have communicable diseases.

**Effective:** June 14, 2013

Omar Syed

[HB 3285](#) by Davis, Yvonne and Nelson

Relating to the reporting of health care associated infections.

This bill amends the Health and Safety Code relating to required reports by hospitals of hospital infections. In addition to information already required to be reported, the bill requires hospitals to report whether the infection resulted in the death of the patient while hospitalized. This change affects a reporting period beginning on or after March 1, 2014. Similarly, summary information compiled and published by the Department of State Health Services (DSHS) regarding health care facilities must also now include whether the patient's death resulted from the infection while hospitalized.

**Impact:** Currently a hospital operated by the state that provides surgical or obstetrical services is required to report information to DSHS about hospital infections; ambulatory surgical centers are also required to file such reports. UT hospitals and ambulatory surgical centers that are currently required to report to DSHS regarding hospital infections will need to include information about whether the infection resulted in the death of the patient while hospitalized.

**Effective:** September 1, 2013

Melodie Krane

[SB 421](#) by Zaffirini and Naishtat

Relating to the Texas System of Care and the development of local mental health systems of care for certain children.

SB 421 broadens the Health and Human Services Commission's (HHSC) responsibility for oversight of the state system of mental health care for minors. HHSC is required to form a consortium with responsibility for oversight of mental health care for minors and to develop local mental health systems of care for minors in inpatient mental hospital/facility settings as well as those who are at risk of being placed in a more restrictive environment to receive mental health services. The consortium is required to include representatives from the Department of State Health Services, the Department of Family and Protective Services, HHSC's Medicaid Program, the Texas Education Agency, the Texas Juvenile Justice Department, the Texas Correctional Office on Offenders with Medical or Mental Impairments, one youth with serious emotional disturbance who has received mental health services, and a family member of a youth who has received mental health services.

The consortium is required to maintain and develop a comprehensive plan for delivery of mental health services to a minor and the minor's family within a system of care framework, implement strategies to expand the use of system of care practices, identify

local, state, and federal funding to finance infrastructure to support system of care efforts, and develop an evaluation system to measure outcomes. Bi-annual reports from the consortium are required to be submitted to the legislature and Council on Children and Families evaluating outcomes and including recommendations to increase access, methods to increase capacity, use of cross system data to make informed decisions, and strategies to maximize funding.

SB 421 allows HHSC to establish rules for the use of the request for proposal process to implement local care systems as funding is available, rules to evaluate the effectiveness of local care systems, rules emphasizing community, strength based, family driven, youth guided, services, and rules to establish service outcome goals. HHSC is directed to develop criteria to evaluate proposals including: emphasis on community, strengths based, family driven, youth guided programs, service outcome goals for communities, and requiring demonstration to collect data for minors receiving care in inpatient settings focused on reducing the rate of placement in inpatient settings.

Joint monitoring by HHSC and the Texas Department of State Health Services is required to monitor the progress of grant communities as well as monitor cost avoidance and net savings resulting from implementation of the local system of care.

The bill repeals sections 251.253, 531.254, 531.255(b)-(d), 531.256, and 531.258 relating the existing pilot program for local expansion of mental health programs and grants for youth programs.

**Impact:** UT System institutions participating in the state system of mental care for minors should be aware of the broadened oversight of mental health care for minors and the structural changes to the mental health care delivery system. UT System institutions should also be aware of the increased data collection and the establishment of new local systems of mental health care through grants.

**Effective:** September 1, 2013

Tim Boughal

## Hospitals

[HB 15](#) by Kolkhorst, et al. and Nelson

Relating to level of care designations for hospitals that provide neonatal and maternal services.

This bill amends the Health and Safety Code to add a new subchapter requiring the executive commissioner of the Health and Human Services Commission (HHSC) to assign level of care designations to each hospital based on neonatal and maternal services provided.

The HHSC executive commissioner is to adopt rules relating to level of care designations, including rules that establish the levels of care for neonatal and maternal services to be assigned to a hospital, prescribe criteria for these designations with specifications of minimum criteria for each level, establish a process for assignment and amending of levels of care, divide the state into regions for these designations, facilitate transfer agreements, require payment to be based on services provided regardless of designation and prohibiting the denial of a designation if minimum requirements are met. The criteria for the designation of levels one through three may not be based on the number of patients treated at a hospitals. Each level of care designation shall require the submission of outcome data and other data as required by the Department of State Health Services, however, such information is confidential, privileged, and inadmissible in a legal proceeding. Neonatal and maternal services are to be evaluated separately and may receive different designations. The level of care designations shall be reviewed every three years. A hospital may request a change of designation.

In addition to the adoption of rules, the HHSC is to study patient transfers for medical necessity and cost-effectiveness.

A hospital that fails to meet minimum requirements for any level of care designation may not receive a designation and cannot be reimbursed through Medicaid for neonatal or maternal services, except for emergency services required under state or federal law.

A seventeen member Perinatal Facility Designation Implementation Task Force is to be appointed by the HHSC executive commissioner by December 1, 2013 to work with HHSC in implementing this bill. Initial rules are to be adopted by the executive commissioner by March 1, 2017 after consideration of the task force report. Neonatal level of care designations are to be completed by August 31, 2017 and the maternal level of care designations are to be completed by August 31, 2019.

**Impact:** Since this bill adds a new subchapter to Tex. Health & Safety Code Ch. 24, known as the Hospital Licensing Act and from which UT hospitals are exempt, UT hospital are at least arguably exempt from this bill; however, there is no specific exemption in this bill for hospitals operated by state governmental entities. If applicable, UT owned and operated hospitals that provide maternal and/or neonatal services would be subject to the level of care designations and submission of outcome data. Medicaid reimbursement for services would be at risk in the unlikely event that a UT hospital was unable to maintain minimum requirements for any level of care designation.

**Effective:** September 1, 2013

Melodie Krane

[HB 1376](#) by Kolkhorst and Nelson

Relating to advertising by certain facilities that provide emergency services; providing an administrative penalty.

HB 1376 amends the Health and Safety Code by regulating advertising by freestanding emergency medical care facilities associated with licensed hospitals. This provision applies only to structurally separate facilities that are not located within or connected to a hospital or owned or operated by a hospital and surveyed as a service of the hospital by an organization that has been granted deeming authority as a national accreditation program for hospitals by the Centers for Medicare and Medicaid Services or granted provider-based status by the Centers for Medicare and Medicaid Services.

Non-exempt freestanding emergency medical care facilities associated with licensed hospitals may not advertise or hold themselves out as a medical facility or provider other than an emergency room if charging the usual and customary rate charged for the same service by a hospital emergency room in the same region of the state. The Department of State Health Services is required to adopt rules for a notice to be conspicuously posted notifying prospective patients that the facility is an emergency room and that it charges rates comparable to hospital emergency rooms. The HHSC Commissioner may assess an administrative penalty against a hospital that violates this chapter.

**Impact:** Since UT System hospitals are not licensed under Chapter 241, they are not subject to these posting requirements nor subject to the administrative penalty. However, they may voluntarily choose to comply.

**Effective:** September 1, 2013

Allene Evans

[SB 944](#) by Nelson and Kolkhorst

Relating to criminal history record checks for certain employees of facilities licensed by the Department of State Health Services.

This bill requires hospitals that are licensed under Texas Health & Safety Code Chapter 241 and that operate mental health services units to conduct criminal background services as required by Chapter 250 of the Texas Health & Safety Code on all employees that provide services in such units.

**Impact:** This bill will not affect hospitals operated by UT System institutions; as UT System operated hospitals are exempt from Texas Health & Safety Code Chapter 241. However, UT System institutions may place faculty, staff or students at facilities subject to the new requirement to provide services or to receive clinical experience. If the facility does not already have a criminal background check requirement in place, UT System institutions will now have to comply with this requirement in order to place faculty, staff or students at the facility.

**Effective:** June 14, 2013

Barbara Holthaus

**SB 945** by Nelson and Davis, Sarah

Relating to the identification requirements of certain health care providers associated with a hospital.

- SB 945 amends the Health and Safety Code relating to hospitals licensed under Chapter 241. The bill mandates each licensed hospital to adopt a policy requiring health care providers to wear a photo ID badge during all patient encounters, unless prevented from doing so by isolation or sterilization protocols. The badge must be large enough to be visible and must clearly state:
- the first or last name of the provider;
- the department with which the provider is associated;
- the type of license held by the provider, if licensed under Title 3 of the Occupations Code; and,
- if applicable, the provider's status as a student, intern, trainee or resident.

Badges are to be worn by "health care providers" defined in the bill as providers who are physicians, employees of the hospital, a person under contract with the hospital or persons in a training or educational program at the hospital.

**Impact:** UT hospitals may voluntarily comply with this bill although not required to do so, since UT-owned hospitals are exempt from licensure under Chapter 241; however, any UT health care provider who is providing care in a non-exempt hospital through an agreement would be required to comply with the hospital policy mandated by this bill.

**Effective:** January 1, 2014

Melodie Krane

**SB 1191** by Davis and Thompson, Senfronia

Relating to the duties of health care facilities, health care providers, and the Department of State Health Services with respect to care provided to a sexual assault survivor in an emergency department of a health care facility.

This bill establishes requirements for services to a sexual assault survivor that apply to a health care facility that has an emergency department, including a general or special hospital owned by the state.

For those health care facilities that are not designated in a community-wide plan as the primary health care facility for treating sexual assault survivors, the facility is required to: 1) inform a sexual assault survivor that they are not the designated community facility for treating sexual assault survivors and to provide the name and located of the designated facility; and 2) inform the survivor that they are entitled to receive mandated care at the designated facility or to be stabilized and transferred to the designated facility. If the survivor chooses to be transferred, the facility must, after obtaining the written signed consent to the transfer, stabilize and transfer the survivor to the designated facility.

Current law requires that a health care facility providing services to a sexual assault survivor must provide, among other things, a forensic medical examination if requested by a law enforcement agency. Under this bill, a forensic examination on a sexual assault survivor can only be performed by a person with basic forensic collection training.

Each health care facility with an emergency department that is not the designated facility for treating sexual assault survivors must develop a plan to train personnel on sexual assault forensic evidence collection. Forensic evidence collection training approved for continuing education by the nursing or physician licensing boards satisfies the training requirement.

**Impact:** Each UT health care facility should assess the applicability of this statute to its facility. If applicable, UT facilities may be required to develop a plan to train personnel on sexual assault forensic evidence collection. Personnel should be advised of the necessity of basic training for those treating sexual assault survivors.

**Effective:** September 1, 2013

Melodie Krane

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## Funding

### [HB 6](#) by Otto, et al. and Williams

Relating to the creation and re-creation of funds and accounts, the dedication and rededication of revenue, and the exemption of unappropriated money from use for general governmental purposes.

HB 1025 is a biennial bill that eliminates, with exceptions, dedications of state revenue to particular funds or particular purposes in order to make more money available for appropriations from general revenue for general governmental purposes. The bill exempts generally federal funds, trust funds, bond funds, and constitutional funds.

The bill also exempts specifically identified dedications made by legislation of the current legislative session. Of particular interest to higher education, the bill preserves the dedication of a permanent fund supporting military and veterans' exemptions created by Section 2 of SB 1158.

**Impact:** The bill does not directly impact UT System or System institutions, but the effect of the bill is to increase the amount of money in the general revenue fund, which is the method of finance for most appropriations to the System.

**Effective:** This Act takes effect immediately (June 14, 2013), except Section 15 takes effect September 1, 2013, and certain exemptions take effect on the later of August 31, 2013, or the effective date of the Act creating, re-creating, dedicating, or rededicating the accounts, revenues, or funds described in Sections 10, 11, and 12.

Steve Collins

### [HB 7](#) by Darby, et al. and Williams

Relating to the amounts, availability, and use of certain statutorily dedicated revenue and accounts; reducing or affecting the amounts or rates of certain statutorily dedicated fees and assessments; making an appropriation.

HB 7 implements recommendations of the Legislative Budget Board (LBB) report, "Options to Reduce Reliance on General-Revenue Dedicated Accounts for Certification of the State Budget." Section 1 of the bill requires the Legislative Budget Board to develop and implement a process to review the dedication, appropriation, and accumulation of General Revenue-Dedicated (GRD) funds and to incorporate into budget recommendations appropriate measures to reduce reliance on available dedicated revenue for certification and include with the budget recommendations plans for further reducing reliance for the succeeding six years.

Two provisions are of interest to higher education. Section 8 expands the purposes for which money in the Designated Trauma Facility and Emergency Medical Services Account 5111 may be appropriated to include appropriations to the Texas Higher

Education Coordinating Board for graduate medical education programs or graduate nursing education programs.

Section 15 requires the Comptroller of Public Accounts, not later than September 30, 2013, to eliminate all GRD accounts established for specialty license plates and to set aside the balances of these accounts for appropriation for their dedicated purpose, including appropriation to institutions of higher education from fees for institutional affinity plates. On or after September 1, 2013, the portion of a fee payable to institutions for affinity plates will be credited to a trust fund account outside of general revenue, which effectively prevents that amount from being appropriated for other purposes.

**Impact:** Money previously allocated to trauma systems is now available as a method of finance for graduate medical education and graduate nursing programs. Institutions should now receive the full benefit of the fees derived from institutional affinity license plates.

**Effective:** This act will take effect immediately (June 14, 2013), except Section 19 takes effect September 1, 2015.

Steve Collins

**SB 31** by Zaffirini and Patrick, Diane

Relating to formula funding for certain semester credit hours earned for dual course credit.

SB 31 excludes from the instruction and operations formula semester credit hours earned by a high school student for dual credit unless the hours are in a core curriculum course, a career or technical course applying towards a certificate or associates' degree, or a foreign language course. The bill exempts from the prohibition credit hours earned in an early college education program.

**Impact:** To the extent that a UT System institution offers credit for dual credit courses that would be excluded from formula funding, the formula funding dollars to the institution will be reduced.

**Effective:** June 14, 2013

Steve Collins

**SB 1019** by Estes and Frank

Relating to the investment of funds by the governing boards of certain institutions of higher education.

SB 1019 allows an institution of higher education with less than \$25 million in endowments to pool the investment of its endowment funds with an institution that has at least \$25 million in endowments. If the institution does pool the investment of endowment funds, the funds may be invested under the "prudent person" standard, which

is defined by law as the “prudent investor” standard applicable to management of the Permanent University Fund.

**Impact:** The bill authorizes the UT Board of Regents to agree to invest the endowment of a qualifying institution in pooled investments through UTIMCO.

**Effective:** September 1, 2013

Steve Collins

### **Financial Management**

**HB 16** by Flynn, et al. and Ellis

Relating to a requirement that a state agency post its internal auditor's audit plan and audit report and other audit information on the agency's Internet website.

This bill creates a new section 2102.015 of the Texas Government Code. It requires that a state agency post on their website, the agency’s internal audit plan and the agency’s annual audit report.

The state agency is not required to post information that is confidential or excepted from public disclosure under the Public Information Act.

The state auditor shall determine the time and manner in which information shall be posted and updated. A detailed summary must include the weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit plan or annual report.

The posting must also include a summary of the action taken by the agency to address the concerns raised by the audit plan or annual report.

**Impact:** This bill will generally require that UT System’s and each component institution’s internal audit plan and annual audit report be published on their respective internet websites. Much of the administrative detail of how such online posting of data will take place is left to the State Auditor.

**Effective:** June 14, 2013

Jason D. King

[HB 2051](#) by Villalba, et al. and Carona

Relating to the authority of public institutions of higher education to make certain investments to support technology commercialization.

HB 2051 explicitly permits UT System institutions to accept convertible notes, convertible promissory debt instruments, or a combination thereof, as consideration in technology commercialization transactions.

**Impact:** UT System institutions already accept convertible notes implicit in the “other business arrangements” language in the statute; however, HB 2051 makes the authority explicit.

**Effective:** June 14, 2013

BethLynn Maxwell

[HB 3116](#) by Cook and Schwertner

Relating to the recovery of uniform statewide accounting project costs from state agencies and vendors.

Chapter 2101 of the Government Code establishes accounting procedures for state agencies. HB 3116 modifies Chapter 2101 to:

- include the administration of a state agency’s purchasing in the list of items defined as “enterprise resource planning” under Chapter 2101, and
- allow the Comptroller to recover from vendors using the Comptroller-operated system for purchasing goods and services any costs that result from the implementation for or use by those vendors of the uniform statewide accounting project located in the Comptroller's office.

**Impact:** Texas institutions of higher education are subject to the requirements of Chapter 2101 of the Government Code regarding enterprise resource planning. Therefore, the finance and purchasing offices at UT System and the UT institutions will need to ensure that their purchasing activities are in compliance with those provisions of Chapter 2101.

**Effective:** September 1, 2013

Scott Patterson

## Purchasing and State Contracts

### [HB 242](#) by Otto and Hegar

Relating to the requirement that certain ad valorem tax-related notices be delivered to a property owner by certified mail.

Tax Code Section 107(d) requires that certain ad valorem property tax notices be delivered by certified mail. HB 242 would add the following notices to Section 107(d) requiring certified mail notices:

- Tax Code Section 23.46(c) chief appraiser notice of determination that agricultural land has been diverted to non-agricultural use.
- Tax Code Section 23.54(e) chief appraiser notice that an owner of agricultural land must file a new application to confirm that the land is still eligible agricultural land.
- Tax Code Section 23.541(c) chief appraiser notice that person is liable for a penalty for late filing of application to appraise land as agricultural use land.
- Tax Code Section 23.55(e) chief appraiser notice of determination that the use of agricultural use land has changed and the owner's right to protest the determination.
- Tax Code Section 23.76(e) chief appraiser notice of determination that timber land use has changed and the owner's right to protest the determination.

**Impact:** Generally there would be no impact on UT System since it is exempt from ad valorem taxes. Tax Code Section 11.11(a). However, if the Permanent University Fund, which is managed by UT System, owns any land, it is subject to county ad valorem taxes. Tax Code Section 11.11(b).

**Effective:** January 1, 2014

Donald O. Jansen

### [SB 673](#) by Carona and Smith

Relating to the requirements for elevators, escalators, and related equipment; providing penalties.

This bill makes numerous, mostly minor changes to Chapter 754 of the Health and Safety Code, Elevators and Escalators. Most significantly it would require elevator inspectors to be registered (as opposed to certified), obtain general liability insurance and complete continuing education requirements. The bill also expands the powers of the director of the Texas Department of Licensing and Regulation to order inspections and issue emergency orders, including power disconnects and equipment lock outs, if the director determines that there is an imminent and significant threat to public health and safety, or to passenger

or worker safety, or if the required annual inspection has not taken place for more than two years. The bill also shortens the time an inspection report has to be delivered to the owner from 10 days after inspection to five.

However, the bill also includes a specific exception that Chapter 754 does not prohibit a registered elevator inspector or registered contractor from performing activities regulated by Chapter 754 if they are performing the activities as an employee of an institution of higher education.

Similarly there is an exception from the general liability insurance requirement for employees of an institution of higher education allowing them to provide written evidence of self-insurance coverage.

**Impact:** Because of the specific exemptions for employees of an institution of higher education, the bill should have only minimal impact of physical plant operations.

**Effective:** September 1, 2013

Edwin Smith

[SCR 30](#) by Uresti and Nevarez

Granting permission to the State of Texas to sue The University of Texas System.

This resolution is filed on behalf the permanent school fund by and through Jerry Patterson, commissioner of the General Land Office and chairman of the School Land Board, to obtain legislative permission to sue the Board of Regents of The University of Texas System in a real estate boundary dispute. Patterson contends that the boundary approved by the General Land Office (GLO) is erroneous, that the land in conflict is subject to lease for oil and gas exploration, and that any attempt by the board to lease the tracts could wrongfully include 157 acres of permanent school fund minerals. This resolution gives Patterson permission to sue the Board of Regents for declaratory relief under the Uniform Declaratory Judgment Act (UDJA). The resolution provides that the legislature takes no position in this dispute and that Patterson cannot seek recovery of monetary damages, but is limited to seeking a determination of the boundary and a court order that fixes and determines the true boundary. According to the resolution, the suit may be brought in Travis County and process is to be served on the secretary to the board of regents in accordance with law.

**Impact:** Passage of this resolution impacts UT System as it subjects the University to further litigation about the boundary. A lawsuit pertaining to the boundary was filed against the Board of Regents in 2009 by the Stroman Ranch in Pecos County to which the university responded with a venue challenge and a plea to the jurisdiction, but legislative permission to sue was never achieved. Although Patterson is limited to declaratory relief and cannot seek damages when he sues, UT System must bear defense litigation costs to a lawsuit that may be brought in Pecos County and is potentially subject to attorney fees and costs.

**Effective:** June 14, 2013

Helen Bright

## **Construction**

**HB 586** by Workman, et al. and Deuell

Relating to the waiver of sovereign immunity for certain design and construction claims arising under written contracts with state agencies.

HB 586 waives sovereign immunity to suit for state agencies, including institutions of higher education, for the purpose of adjudicating a claim for breach of a written contract executed after September 1, 2013, for engineering, architectural, or construction services or for materials related to engineering, architectural, or construction services in which the amount in controversy is not less than \$250,000, excluding penalties, costs, expenses, prejudgment interest and attorney fees. The total amount of money that can be awarded is limited by: (1) the balance due and owed by the state agency under the contract; (2) the amount owed for written change orders; (3) reasonable and necessary attorney fees if attorney fees are available to all parties in the contract; and (4) interest at the rate specified by the contract or if unspecified, the rate for post-judgment interest under the Finance Code, but not to exceed 10%. Damages may not include consequential or exemplary damages and damages for unabsorbed home office overhead. Judgments may not be paid from funds appropriated to the state agency from general revenue unless specifically appropriated for that purpose; further, state property will not be subject to seizure, attachment, or garnishment or any other remedy to satisfy a judgment. Before January 1 of each even numbered year, each state agency shall report to the governor, the comptroller, and each house of the legislature the cost of defense to the institution and the Attorney General in an adjudication brought against the agency; the report shall include the amount claimed in any adjudication pending on the date of the report.

**Impact:** This bill allows contractors to bring suit against the university without obtaining legislative consent for breach of engineering, architectural, or construction contracts executed after September 1, 2013 with damages of \$250,000 or more. A party seeking to enforce a university contract through litigation will be limited to recovering actual damages as specified in the bill, attorney fees if such fees are available to all parties in the contract, and interest at the rate specified in the contract. Construction/engineering/architectural contract templates should be reviewed for any needed modifications resulting from this legislation prior to its effective date. The bill also includes required reporting by the institution for such litigation.

**Effective:** September 1, 2013

Helen Bright

## Information Resources

[HB 1043](#) by Lewis, et al. and Duncan

Relating to the offense of the unauthorized duplication of certain recordings.

Section 641.051 of the Business & Commerce Code establishes criminal penalties if a recording that was initially fixed before February 15, 1972 is reproduced or transferred with the intent to be sold or otherwise used for commercial advantage or private financial gain without the consent of the recording's owner. HB 1043 modifies Section 641.051 to provide that such penalties do not apply to persons engaged in radio or television broadcasting who transfers, or causes to be transferred, a recording:

intended for or in connection with a radio or TV broadcast, or

for archival purposes.

**Impact:** Persons using and managing information systems at UT System and the UT institutions need to be aware of and ensure compliance with the changes HB 1043 makes to Section 641.051's statutory prohibitions on unauthorized recordings.

**Effective:** June 14, 2013

Scott Patterson

[HB 2268](#) by Frullo, et al. and Carona

Relating to search warrants issued in this state and other states for certain customer data, communications, and other related information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services.

Prior to this year, the Texas state laws on wiretaps, which applies to phone calls and emails in transit and its version of the federal Stored Communication Act mimicked the federal Wiretap act and Stored Communications Act which set different requirements for when a law enforcement officer can access emails and other electronic messages based on how long they have been held in storage by a communications service providers or a remote storage facility. For un-opened messages and message less than 180 day, a search warrant is required. For messages in storage over 180 days, only a subpoena or court order is required.

Under HB 2268, Texas eliminates the distinction and requires state law enforcement officers to obtain a search warrant to access the content of any email from a communications service providers or a remote storage facility.

User data and other meta-data about the message is still available through a subpoena or court order.

Communications service providers or remote storage facilities must also comply with out of state search warrants issued by a court of competent jurisdiction.

**Impact:** Courts are divided as to whether under federal law a public university is considered to be a communications service provider or a remote storage facility for purposes of compliance with the federal or state Stored Communications Act. Also, recent federal court cases recognize that the portions of the federal Stored Communication Act that permit access by law enforcement officers to the content of email messages without a warrant may violate the Fourth Amendment of the US Constitution which prohibits unlawful searches or seizures by the government. What is clear is that public universities, including System institutions, are governmental agencies for purposes of complying with the Fourth Amendment. This means that if a System institution wishes to conduct a search of employer or student emails held by or on behalf of the institution, it should follow its own policies for conducting employment related searches and consult with local counsel or the Office of General Counsel before conducting searches of student emails or responding to a search warrant, subpoena or court order issued by a state or federal law enforcement agency requesting access to either employee or student emails held by or on behalf of the institution.

**Effective:** June 14, 2013

Barbara Holthaus

[HB 2422](#) by Gonzales, Larry and Schwertner

Relating to consideration of advanced Internet-based computing service options in state purchasing and to the use of advanced Internet-based computing services by state agencies.

HB 2422 provides that a state agency subject to the automated information system purchasing requirements set forth in Chapter 2157 of the Government Code may consider purchasing advanced Internet-based computing services for a “major information resources project” defined in Chapter 2054 of the Government Code. However, a state agency doing so must ensure that such projects meet or exceed required state standards for cybersecurity. HB 2422 also authorizes the Department of Information Resources (DIR) to review the process for the coordinated development, hosting, and management of computer software for state agencies that use advanced Internet-based computing services.

**Impact:** Chapter 2157 of the Government Code is located in Title 10, Subtitle D of the Government Code. However, the statutes that provide best value procurement authority to Texas institutions of higher education — Sections 51.9335, 73.115, and 74.008 of the Education Code — state that Title 10, Subtitle D of the Government Code does not apply to the acquisition or purchase of goods and services under such statutes (except for specific laws or rules related to contracting with historically underutilized businesses or to procurement from persons with disabilities.) Therefore, HB 2422’s changes will not impact UT System or the UT institutions to the extent they acquire and

purchase goods and services under the best value procurement authority statutes identified above.

**Effective:** June 14, 2013

Scott Patterson

[HB 2472](#) by Cook and Birdwell

Relating to the continuation and functions of the Department of Information Resources and certain procurement functions of the comptroller of public accounts.

HB 2472 makes the following changes to Texas law affecting state agency procurement and the duties and authority of the Department of Information Resources (“DIR”) and the Comptroller:

- Revises Chapter 2151 of the Government Code to authorize the Sunset Advisory Commission to evaluate the state’s overall procurement system, including any provision in state law that relates to procurement and contracting for goods and services, and present a report on its findings to the Legislature by January 1, 2021.
- Modifies Chapter 2054 of the Government Code to establish new limitations, controls, and oversight of the Department of Information Resources (“DIR”) operations, such as:
  - extending the existence of DIR through September 1, 2021;
  - modifying the training program that voting and non-voting members of DIR’s board are required to attend, such as requiring the program to include contract management training;
  - revising the conflict of interest statute so that DIR employees other than DIR’s executive director are able to participate in DIR’s contract bidding processes (including the development of proposals related to a contract and contract negotiation) even if the employee receives income from, or the employee’s spouse is employed by, any likely bidder on the contract;
  - requiring DIR’s governing board to appoint a customer advisory committee to report to and advise the board on the status of DIR’s delivery of critical statewide services;
  - requiring DIR to:
    - adopt a process for determining the amount of the administrative fees that DIR charges to ensure that those fees directly relate to the amount DIR requires to recover its costs of operations,

- develop a policy to encourage the use of negotiated rulemaking procedures for the adoption of DIR rules as well as appropriate alternative dispute resolution procedures to assist in the resolution of internal and external disputes under DIR’s jurisdiction,
- establish a DIR internal auditor appointed and overseen by DIR’s governing board,
- assume responsibilities for information resources technology consolidation initiatives (including those applicable to statewide technology centers), such as requiring DIR to (1) develop methods for measuring cost and progress of such initiatives, (2) evaluate the progress and actual costs and cost savings of such consolidations, and (3) report the results to DIR’s board, the Legislative Budget Board (LBB), and the customers involved,
- either implement recommendations resulting from a review by the Contract Advisory Team (Government Code, Chapter 2262, Subchapter C) of a DIR solicitation of a contract with a value of \$1 million or more or provide a written explanation of why those recommendations cannot be implemented,
- comply with new statutory requirements regarding conflicts of interest in DIR contracting, establishment of a DIR contract management guide and rules, and a policy for training DIR staff in contract management.
- comply with new statutory requirements regarding major outsourced contracts that DIR enters into with entities other than the state or a political subdivision of the state, and
- comply with specific requirements in order to ensure that DIR obtains the best value for the state when negotiating with vendors for information technology commodity items (as well as requiring the Comptroller to establish a clearing fund account for administering the purchase of such items, or for other purposes specified by the Legislature);
- assigning additional oversight responsibilities to DIR’s governing board, such as giving that board a role in establishing DIR’s strategic direction and new initiatives for DIR service offerings as well as requiring that board to regularly evaluate DIR’s operations and fulfillment of its information resources technology mission;
- establishing controls over the use by DIR of consultants and outside staff to temporarily augment DIR’s existing staff, including requirements for DIR to perform an annual analysis of DIR’s staffing needs and use of such persons and requiring advance approval by DIR’s governing board via DIR’s budget process before such persons can be hired by DIR; and

- requiring DIR to provide on November 15 of each even-numbered year a report on financial matters and significant issues regarding contract performance on the state electronic Internet portal project under Chapter 2054, Government Code.
- Requires the Comptroller to establish a statewide technology account for administration of statewide technology centers provided for by Government Code, Ch. 2054, Subchapter L or for other purposes established by the Texas Legislature.
- Makes the Texas Comptroller’s authority regarding state purchasing under Title 10 of the Government Code and Chapter 122 of the Human Resources Code subject to the Sunset Act (Government Code, Chapter 325), extends such authority through September 1, 2021 (subject to further extension under the Sunset Act), and preserves the 2007 statutory transfer to the Comptroller of certain powers and duties of the former Texas Building and Procurement Commission.
- Requires DIR and the Comptroller to establish a procurement coordination committee to identify and analyze opportunities for collaboration, consolidation, coordination, cost savings, and efficiencies between the two.
- Revises the Comptroller’s obligation to submit reports on contracts awarded to historically underutilized businesses (“HUBs”) so that such reports are be submitted to the presiding officer of each house of the legislature on May 15 and November 15.
- Makes October 15 the date on which the Comptroller must submit a report to the Governor and legislative leaders on the education and training efforts that the Comptroller has made toward HUBs.
- Eliminates reporting requirements placed on the Comptroller regarding sales by Texas Correctional Industries (Government Code, Ch. 497, Subchapter A.)

**Impact:** The change made by HB 2472 that may have the greatest impact on UT System and the UT institutions would appear to be the authority of the Sunset Advisory Commission to evaluate the state’s overall procurement system, as set forth in the first item above, as such an evaluation could affect the “best value” procurement authority provided to Texas institutions of higher education under Sections 51.9335(c), 73.115(c) and 74.008(c), Texas Education Code. Furthermore, UT System and the UT institutions have significant interaction and involvement with DIR and the Comptroller on purchasing implementation, management, and oversight. HB 2472’s changes will require UT System and the UT institutions to respond to the significant changes implemented by the bill, including the implementation of necessary updates to UT procedures, policies, and operations as a result of such changes.

**Effective:** September 1, 2013

Scott Patterson

[HB 2539](#) by Turner, et al. and Davis

Relating to requiring computer technicians to report images of child pornography; providing a criminal penalty.

HB 2539 adds a new Chapter 109 to the Business & Commerce Code requiring computer technicians (defined as individuals employed to install, repair, or otherwise service a computer for a fee) to report to a local or state law enforcement agency or the Cyber Tipline at the National Center for Missing and Exploited Children any images that are or that appear to be child pornography on a computer that the technician accesses in the course of his or her employment or business.

The new Chapter 109 makes the intentional failure of a computer technician to make such a report a Class B misdemeanor; however, Chapter 109 provides a defense to prosecution for such an offense if a report of an image of child pornography was not made because the child in the image appeared to be at least 18 years of age. Chapter 109 also states that computer technicians may not be held liable in civil actions for reporting or failing to report the discovery of such an image, except in cases of a technician's willful or wanton misconduct.

Furthermore, the new Chapter 109 provides that a telecommunications provider, commercial mobile service provider, or information service provider may not be held liable for the failure to report child pornography that is transmitted or stored by a user of its service.

**Impact:** UT System and the UT institutions both employ and contract with computer technicians; therefore, UT System and the UT institutions would need to ensure that such technicians comply with the requirements of the new Chapter 109.

**Effective:** September 1, 2013

Scott Patterson

[HB 3093](#) by Elkins and Zaffirini

Relating to the powers and duties of the Department of Information Resources and the Legislative Budget Board regarding information resources technologies of state agencies.

HB 3093 revises Chapter 2054 of the Government Code concerning state information resources to require:

- the Department of Information Resources ("DIR") to develop contracting standards for information resources technologies acquisition and purchased services in

coordination with the Quality Assurance Team established under Chapter 2054 (“QAT”);

- the DIR to work with state agencies to ensure the deployment of standardized information technology (“IT”) contracts;
- the DIR to include the following as part of its biennial report on the use of information resources technologies by state government:
  - the identification of proposed major information resources projects for the next state fiscal biennium, including information on the costs of such projects, and
  - examinations of major information resources projects completed by state agencies in the previous state fiscal biennium as well as those projects that have reached the second anniversary of their completion;
- the DIR to conduct, in consultation with the QAT, the Information Technology Council for Higher Education (“ITCHE”), and the Legislative Budget Board (“LBB”), a review of existing statutes, procedures, data, and organizational structures to identify opportunities to increase efficiency, customer service, and transparency in information resources technologies, and report the resulting findings to the Governor and members of the Legislature by December 1, 2014; and
- the LBB to establish, in consultation with DIR and ITCHE, criteria for use in evaluating the biennial operating plans for information technology projects that state agencies are required to submit under Chapter 2054.

**Impact:** Texas institutions of higher education are state agencies subject to Chapter 2054 of the Government Code, and therefore, the changes HB 3093 makes to Chapter 2054 would appear to affect IT procurement, use, management, planning, and reporting by UT System and the UT institutions.

**Effective:** September 1, 2013

Scott Patterson

[SB 866](#) by Paxton and Elkins, et al.

Relating to authorizing local governments to participate in statewide technology centers.

Chapter 2054 of the Government Code authorizes the Department of Information Resources (“DIR”) to operate statewide technology centers. SB 866 changes Chapter 2054 so that:

- DIR would be authorized to establish or expand such statewide technology centers to include participation by local governments (including an entity supervising performance of an interlocal agreement between two or more local governments);

- such statewide technology centers would not be authorized to provide information resources technologies related to telecommunications services, advanced communications services, and information service as those terms are defined in the Federal Communications Act (Chapter 5 of Title 47 of the United States Code); and
- the scope of operation of such statewide technology centers can include the deployment, development and maintenance of software applications.

**Impact:** Chapter 2054 of the Government Code allows university systems and institutions of higher education to participate in statewide technology centers. The changes that SB 866 makes to Chapter 2054 of the Government Code may provide opportunities for mutually beneficial participation in statewide technology centers by UT System, UT institutions and adjacent local governments.

**Effective:** May 18, 2013

Scott Patterson

[SB 1101](#) by Van de Putte and Larson, et al.

Relating to the Cybersecurity, Education, and Economic Development Council.

SB 1101 extends the existence of the Cybersecurity, Education, and Economic Development Council (Government Code, Chapter 2054, Subchapter N) until September 1, 2015.

**Impact:** The efforts of the Cybersecurity, Education, and Economic Development Council may impact the information security offices and efforts at UT System and the UT institutions.

**Effective:** May 10, 2013

Scott Patterson

[SB 1102](#) by Van de Putte and Larson, et al.

Relating to the appointment of a state cybersecurity coordinator.

SB 1102 adds a new Subchapter O to Chapter 2054 of the Government Code requiring the executive director of the Department of Information Resources (“DIR”) to designate a DIR employee to be the state cybersecurity coordinator by December 31, 2013. Such a state cybersecurity coordinator is to oversee cybersecurity matters for the State of Texas and has the authority to:

- establish a council of public and private sector leaders and cybersecurity practitioners to collaborate on matters of cybersecurity concerning the State of Texas;

- establish a voluntary program that recognizes private and public entities functioning with exemplary cybersecurity practices; and
- implement any portion or all of the recommendations made by the Cybersecurity, Education, and Economic Development Council under Chapter 2054, Subchapter N of the Government Code.

**Impact:** The efforts of the new state cybersecurity coordinator created by SB 1102 will impact the information security offices and efforts at UT System and the UT institutions.

**Effective:** May 10, 2013

Scott Patterson

[\*\*SB 1134\*\*](#) by Ellis and Elkins, et al.

Relating to the duties of the Department of Information Resources regarding cybersecurity.

SB 1134 modifies Section 2054.059 of the Government Code to expand the responsibilities of the Department of Information Resources (“DIR”) regarding cybersecurity while requiring DIR to use available funds to do so. Such expanded DIR responsibilities would include development of strategies and a framework for securing state agency cyberinfrastructure and assessing and mitigation of cybersecurity risk, provision of cybersecurity training to state agencies, and promoting public awareness of cybersecurity issues.

**Impact:** Section 2054.059 may affect the information security efforts at UT System and the UT institutions. The information security offices at UT System and the UT institutions will need to interact and coordinate with DIR in its performance of the cybersecurity responsibilities under Section 2054.059.

**Effective:** September 1, 2013

Scott Patterson

[\*\*SB 1597\*\*](#) by Zaffirini and Smithee

Relating to the development of state agency information security plans.

SB 1597 adds a new Section 2054.133 to the Government Code requiring each state agency to develop and update an information security plan for protecting the security of the agency's information. Section 2054.133 identifies specific requirements for the plan and requires state agencies to submit the plan to the Department of Information Resources by October 15<sup>th</sup> of each even-numbered year. Section 2054.133 also requires written copies of such plans to omit information that could expose vulnerabilities in the agency's network or online systems, and makes such plans confidential and exempt from disclosure under the Texas Public Information Act.

**Impact:** The information security offices at UT System and the UT institutions will need to develop, update, and submit the information security plan required by the new Section 2054.133.

**Effective:** September 1, 2013

Scott Patterson

### **Real Property and Space Leasing**

[HB 1753](#) by Patrick, et al. and Hancock

Relating to authorizing the board of regents of The University of Texas System to acquire certain property in the City of Arlington.

This bill provides legislative authorization for the acquisition of multiple parcels immediately east of the U. T. Arlington campus and bounded by South Center Street, East Mitchell Street, South Mesquite Street, and East 3rd Street in Arlington, Texas.

**Impact:** This bill eliminates any need for Coordinating Board approval of acquisition of real property within the identified acquisition zone. (Additionally, SB 215, 83rd Regular Legislative Session, which is effective September 1, 2013, eliminates the Coordinating Board's authority to approve or disapprove any real property acquisitions.)

**Effective:** June 14, 2013

Florence Mayne

[SB 887](#) by Uresti and Orr

Relating to certain correction instruments in the conveyance of real property.

SB 887 expands the scope of nonmaterial changes that a person who has personal knowledge of facts relevant to the correction of an original conveyance instrument may make to the original instrument. In addition to the nonmaterial changes permitted under current law, SB 887 allows such person to correct a wrong reference to a plat, other plat information, or block number in a legal description. SB 877 also allows such person to make a nonmaterial change that results from an inadvertent error as well as one resulting from a clerical error permitted under current law.

SB 887 clarifies that a correction instrument replaces the original instrument, and that a correction instrument is subject to the property interest of a creditor or a subsequent purchaser for valuable consideration without notice acquired on or after the date the original instrument was filed for record and before the correction instrument has been filed for record.

**Impact:** The bill’s impact on UT System varies. The expanding scope of permitted nonmaterial changes is beneficial in cases where UT System needs to make use of a correction instrument to correct an error in the original instrument. It is adverse in cases where a UT System’s intervening interest (e.g., an interest acquired through will or gift) may be cut off or otherwise affected as a result of a third party’s correction instrument relating back to the original instrument. When reviewing or preparing correction instruments, UT System staff should confirm their compliance with the requirements of Sections 5.027 – 5.031 of the Texas Property Code, as amended by SB 887.

**Effective:** September 1, 2013

Ha Dao

### **Environmental Issues**

[\*\*HB 788\*\*](#) by Smith, et al. and Hinojosa

Relating to permitting of greenhouse gas emissions by the Texas Commission on Environmental Quality; limiting the amount of a fee.

HB 788 authorizes the Texas Commission on Environmental Quality (“TCEQ”) to issue Clean Air Act permits for the regulation of greenhouse gas emissions (e.g., carbon dioxide, methane, nitrous oxide) so long as federal law requires authorization. These permits would not be subject to being challenged through a contested case process. The TCEQ is authorized to impose fees necessary to cover the direct cost of implementation.

**Impact:** Under federal law, certain projects that may generate significant emissions of greenhouse gases require permitting under the Clean Air Act. Currently, the Environmental Protection Agency is authorized to issue such permits, which can force UT institutions to secure two permits, one state and one federal. This bill would authorize the TCEQ to issue greenhouse gas permits, as well as the state pre-construction permit, eliminating dual permitting and creating a more streamlined, efficient process for those major projects with significant air emissions (power plants, boilers, etc.).

**Effective:** June 14, 2013

Jim Phillips

[\*\*SB 347\*\*](#) by Seliger and Lewis

Relating to funding for the operations of the Texas Low-Level Radioactive Waste Disposal Compact Commission and to the disposal of certain low-level radioactive waste.

SB 347 streamlines the funding mechanism for the Texas Low Level Radioactive Waste Disposal Compact Commission by making technical amendments to Chapter 401 of the Texas Health and Safety Code provisions governing the Perpetual Care Fund and the new Environmental Radiation Perpetual Care Account. The bill also provides that the disposal facility license holder may not accept waste from a nonparty state unless the

waste has been volume reduced, establish an overall limit on the nonparty waste the facility could accept and would raise the annual curie limit for nonparty waste to 275,000 curies annually beginning in FY 2014.

SB 347 also provides that fees collected by the Texas Commission on Environmental Quality (“TCEQ”) and Department of State Health Services be suspended when the account balance reaches \$100 million and would be reinstated if the balance falls to \$50 million. The TCEQ is also provided additional guidance concerning the collection and use of financial security from the disposal facility license holder for covering the cost of corrective actions.

**Impact:** The bill may result in some variation in the disposal fees paid by UT institutions to dispose of low-level radioactive waste at the Texas Compact facility. Given that most of the waste generated from UT institutions is Class A waste and Class A generators are being encouraged to export such waste rather than use up capacity at the facility, the impact may be minimal. UT institutions will benefit from having a viable Compact Commission with assured funding to oversee the operations of the Compact facility.

**Effective:** September 1, 2013

Jim Phillips

## Oil and Gas

[SB 1240](#) by Duncan and Keffer

Relating to the partition of mineral interests of a charitable trust.

New Sections 124.001 and 124.002 are added to the Property Code which would prohibit compulsory partition by a joint owner or claimant of any mineral interest owned by or claimed by a charitable trust. An exception to this prohibition is where the charitable trust has refused to execute a mineral lease, the terms of which are fair and reasonable, to the plaintiff or petitioner in the proceeding.

- A “charitable trust” is a charitable entity, a trust the stated purpose of which is to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity.
- A “charitable entity” is a corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or other civic or public purpose by Internal Revenue Code Section 501(c)(3).

- “Mineral interest” includes any interest in oil, gas, or other mineral substance in place or that otherwise constitutes real property without regard to the depth at which the mineral substance is found.
- The new statute applies to partition actions commenced on or after the effective date.

**Impact:** This new statute would exempt UT System, subject to the stated exception, from the general rule that a joint owner or claimant of mineral interests may compel a partition among the joint owners or claimants. Although UT System is not exempt from taxation under IRC Section 501(c)(3) [it is exempt under the intergovernmental immunity doctrine], it is a scientific and educational institution described in Section 501(c)(3). Although UT System cannot be forced into a partition of jointly owned mineral interests, it could agree to a partition or force the other joint owners (who are not charities) into a partition.

**Effective:** June 14, 2013

Donald O. Jansen

### **Property Accounting and Management**

[HB 242](#) by Otto and Hegar

Relating to the requirement that certain ad valorem tax-related notices be delivered to a property owner by certified mail.

Tax Code Section 107(d) requires that certain ad valorem property tax notices be delivered by certified mail. HB 242 would add the following notices to Section 107(d) requiring certified mail notices:

- Tax Code Section 23.46(c) chief appraiser notice of determination that agricultural land has been diverted to non-agricultural use.
- Tax Code Section 23.54(e) chief appraiser notice that an owner of agricultural land must file a new application to confirm that the land is still eligible agricultural land.
- Tax Code Section 23.541(c) chief appraiser notice that person is liable for a penalty for late filing of application to appraise land as agricultural use land.
- Tax Code Section 23.55(e) chief appraiser notice of determination that the use of agricultural use land has changed and the owner’s right to protest the determination.

- Tax Code Section 23.76(e) chief appraiser notice of determination that timber land use has changed and the owner's right to protest the determination.

**Impact:** Generally there would be no impact on UT System since it is exempt from ad valorem taxes. Tax Code Section 11.11(a). However, if the Permanent University Fund, which is managed by UT System, owns any land, it is subject to county ad valorem taxes. Tax Code Section 11.11(b).

**Effective:** January 1, 2014

Donald O. Jansen

[SB 673](#) by Carona and Smith

Relating to the requirements for elevators, escalators, and related equipment; providing penalties.

This bill makes numerous, mostly minor changes to Chapter 754 of the Health and Safety Code, Elevators and Escalators. Most significantly it would require elevator inspectors to be registered (as opposed to certified), obtain general liability insurance and complete continuing education requirements. The bill also expands the powers of the director of the Texas Department of Licensing and Regulation to order inspections and issue emergency orders, including power disconnects and equipment lock outs, if the director determines that there is an imminent and significant threat to public health and safety, or to passenger or worker safety, or if the required annual inspection has not taken place for more than two years. The bill also shortens the time an inspection report has to be delivered to the owner from 10 days after inspection to five.

However, the bill also includes a specific exception that Chapter 754 does not prohibit a registered elevator inspector or registered contractor from performing activities regulated by Chapter 754 if they are performing the activities as an employee of an institution of higher education.

Similarly there is an exception from the general liability insurance requirement for employees of an institution of higher education allowing them to provide written evidence of self-insurance coverage.

**Impact:** Because of the specific exemptions for employees of an institution of higher education, the bill should have only minimal impact of physical plant operations.

**Effective:** September 1, 2013

Edwin Smith

[SCR 30](#) by Uresti and Nevarez

Granting permission to the State of Texas to sue The University of Texas System.

This resolution is filed on behalf the permanent school fund by and through Jerry Patterson, commissioner of the General Land Office and chairman of the School Land Board, to obtain legislative permission to sue the Board of Regents of The University of Texas System in a real estate boundary dispute. Patterson contends that the boundary approved by the General Land Office (GLO) is erroneous, that the land in conflict is subject to lease for oil and gas exploration, and that any attempt by the board to lease the tracts could wrongfully include 157 acres of permanent school fund minerals. This resolution gives Patterson permission to sue the Board of Regents for declaratory relief under the Uniform Declaratory Judgment Act (UDJA). The resolution provides that the legislature takes no position in this dispute and that Patterson cannot seek recovery of monetary damages, but is limited to seeking a determination of the boundary and a court order that fixes and determines the true boundary. According to the resolution, the suit may be brought in Travis County and process is to be served on the secretary to the board of regents in accordance with law.

**Impact:** Passage of this resolution impacts UT System as it subjects the University to further litigation about the boundary. A lawsuit pertaining to the boundary was filed against the Board of Regents in 2009 by the Stroman Ranch in Pecos County to which the university responded with a venue challenge and a plea to the jurisdiction, but legislative permission to sue was never achieved. Although Patterson is limited to declaratory relief and cannot seek damages when he sues, UT System must bear defense litigation costs to a lawsuit that may be brought in Pecos County and is potentially subject to attorney fees and costs.

**Effective:** June 14, 2013

Helen Bright

## Research

[HB 870](#) by Bell, et al. and Hegar

Relating to Prairie View A&M University's eligibility to participate in the research development fund.

HB 870 provides that Prairie View A&M will be eligible to participate in the Texas Research Development Fund administered by the THECB under its “Closing the Gaps by 2015” initiative only if it is not eligible for funding from the Texas Competitive Knowledge Fund. In addition, Prairie View A&M will be eligible to participate in the Texas Research Development Fund only if the distribution of its proportionate share of the fund does not reduce the proportional distribution the other eligible institutions

received in the previous fiscal biennium. This new provision is effective for the fiscal biennium ending August 31, 2017.

**Impact:** HB 870 will not reduce the funding available for eligible UT institutions by virtue of Prairie View A&M's eligibility for participation in this fund.

**Effective:** June 14, 2013

BethLynn Maxwell

**HB 2103** by Villarreal, et al. and Seliger

Relating to education research centers and the sharing of educational data between state agencies; redesignating certain fees as charges.

HB 2103 makes several changes to the oversight and operations of Education Research Centers (ERCs). The Coordinating Board is required to establish not more than three ECRs to conduct studies and evaluations using the data described in Section 1.005 of the Education Code. The Coordinating Board is required to solicit requests for proposals from appropriate institutions to establish each ERC and would evaluate those proposals based on criteria adopted by the coordinating board.

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

HB 2103 removes the commissioner of education from the direct oversight of ERCs and would remove the commissioner's power to require ERCs to perform particular studies. Any cooperating agency may request that an ERC conduct a study or evaluation if the agency provided sufficient funds to finance the study or evaluation.

**ERC use of shared student data.** HB 2103 provides that in conducting studies, an ERC could use student data and educator data, including FERPA protected confidential data, that the center collected from any of the following: Texas Education Agency, the Coordinating Board, Texas Workforce Commission, or any other agency or institution of higher education, school district, a provider of services to these institutions, or any entity explicitly named in an approved ERC research project.

ERCs are required to comply with applicable state and federal law on confidentiality of student information. ERCs are also required to provide researchers access to student data only through secure methods and would require researchers to sign confidentiality agreements. Finally, ERCs must conduct regular security audits and report the results to the Coordinating Board and an ERC research advisory board established by HB 2103 to review ERC studies or evaluation proposals.

HB 2103 requires cooperating agencies to execute agreements for the sharing of data for the purpose of facilitating the studies or evaluations at ERCs. Under these agreements,

each cooperating agency is required share appropriate data collected by the agency for the preceding 20 years. A cooperating agency must update this information at least annually.

HB 2103 also removes certain notification requirements to the governor, the Legislative Budget Board, and the educational institution hosting the ERC where the particular study was being undertaken.

**Student data storage.** HB 2103 requires that the Coordinating Board store the data shared with it by cooperating agencies in a repository called the “P-20/Workforce Data Repository.” The board must also store other data in the repository, including data from college admission tests and the National Student Clearinghouse. It would use appropriate data matching and confidentiality procedures as approved by the cooperating agencies.

**Data sharing agreements with other states.** HB 2013 also provides that the Coordinating Board may enter into data sharing agreements with local agencies or organizations that provide educational services or with other relevant organizations of another state. The Coordinating Board would give priority to those states that sent the most college students to Texas or that received the most college students from here. These agreements would be reviewed by the U.S. Department of Education.

**ERC research advisory board.** HB 2103 also establishes an ERC research advisory board to review ERC studies or evaluation proposals to ensure appropriate data use. Each study or evaluation conducted by an ERC would have to be approved in advance by majority vote of the advisory board. ERCs could submit proposals from another educational institution, a graduate student, a P-16 Council, or another researcher proposing research to benefit education in Texas. In determining whether to approve a proposed study, the advisory board would have to:

- consider the potential of the research to benefit education in Texas;
- require each ERC director or designee to review and approve the proposed research design and methods; and
- consider the extent to which the data required to complete the proposed study or evaluation was not readily available from other data sources.
- The advisory board would be chaired and maintained by the commissioner of higher education. Advisory Board membership would include:
  - a representative of the coordinating board, designated by the commissioner of higher education;
  - a representative of TEA, designated by the education commissioner;
  - a representative of TWC, designated by the workforce commissioner;
  - the director of each ERC or the director’s designee; and

- a representative of preschool, elementary, or secondary education.

The board would meet at least quarterly. The advisory board would not be a governmental body and thus not subject to the Open Meetings Act or Open Records Act.

**Other provisions.** HB 2103 changes the funding method for ERCs from “fees” to “charges” that would be imposed for the use of a center’s research, resources, or facilities.

HB 2103 also defines “cooperating agencies” to mean TEA, the coordinating board, and TWC.

**Impact:** To the extent UT System academic institutions have Education Research Centers, each should be aware of the changes to the oversight and operations of Education Research Centers.

**Effective:** June 14, 2013

Melissa V. Garcia

[SB 67](#) by Nelson and Branch

Relating to reporting requirements for institutions of higher education conducting human stem cell research.

SB 67 requires each institution of higher education to include specific information regarding the amounts spent on and sources of funding for human embryonic and adult stem cell research in its annual report to the THECB required under Education Code Section 61.051(h). The THECB must submit this information to the legislature no later than January 1 each year.

**Impact:** SB 67 will impact UT System institutions conducting human stem cell research by requiring them to track the specific amounts spent on human embryonic and adult stem cell research including the source of the funding. UT System institutional Offices of Research Administration should review the requirements of this bill and determine how to update existing reports and databases to identify, track, and report the funding and expenditures for human embryonic and adult stem cell research projects.

**Effective:** September 1, 2013

BethLynn Maxwell

[SB 149](#) by Nelson and Keffer, et al.

Relating to the Cancer Prevention and Research Institute of Texas.

SB 149 makes numerous substantial amendments to Health and Safety Code Chapter 102 governing the Cancer Prevention and Research Institute of Texas (CPRIT) regarding

ethics and conflicts of interest, establishing a compliance program, and establishing the Cancer Prevention and Research Interest and Sinking Fund.

**Compliance Officer:** CPRIT must employ a Chief Compliance Officer and establish a compliance program to ensure that CPRIT, its employees and committee members comply with the rules regarding ethics, standards of conduct and financial reporting.

**Oversight Committee:** This bill removes the Comptroller and Attorney General as members of the Oversight Committee, which will now consist of 9 members. The Oversight Committee shall elect a presiding and assistant presiding officer every two years, who may not serve in that position for two consecutive terms. Oversight Committee members must disclose each political contribution to a candidate for a state or federal office over \$1,000 made in the five preceding years and each year of that person's term. A report of the Oversight Committee members' political contributions must be posted on the CPRIT website.

**Program Integration Committee:** CPRIT shall establish a Program Integration Committee composed of 1) CPRIT's Chief Executive Officer, 2) CPRIT's Chief Scientific Officer, 3) CPRIT's Chief Product Development Officer, 4) the Commissioner of State Health Services, and 5) CPRIT's Chief Prevention Officer. This committee will review grant applications recommended by the Research and Prevention Programs Committee, and those approved by majority vote will be sent to the Oversight Committee for final grant approval.

**Conflicts of Interest:** CPRIT employees and committee members shall recuse themselves if they or their relatives (to the second degree of consanguinity or affinity) have a professional or financial interest in an entity receiving or applying to receive money from CPRIT. Oversight Committee members must file a personal financial statement with the Chief Compliance Officer. All committee members and employees must disclose any conflicts of interest in writing and recuse themselves from participating in the review, discussion and vote on the application. The Oversight Committee shall adopt rules that permit waivers to the conflict of interest requirements to be granted under exceptional circumstances, which may be granted upon majority vote of the Oversight Committee. Procedures for investigation of unreported conflicts of interest are established.

**Code of Conduct:** The Oversight Committee must adopt of a code of conduct applicable to each committee member and employee. The code of conduct must include provisions prohibiting activities that could influence the member or employee in the discharge of official duties, including: acceptance or solicitation of gifts, employment or compensation, making personal investments, receiving benefits for exercising official powers, leasing property, submitting a grant application, and serving on a board of directors.

**Grant Funding:** Prior to receiving the grant, grant recipients must certify that they have received matching funds dedicated to the research that is the subject of the grant award. CPRIT will adopt a policy on advance payments to grant recipients. The following

formula may be used by institutions of higher education to count towards matching funds: the difference between the indirect cost rate authorized by the federal government for research grants awarded and the CPRIT indirect cost rate. CPRIT will establish reporting requirements for grant recipients and a system to track reports and monitor status. CPRIT can suspend or terminate the grant if the recipient fails to comply with the reporting requirements or matching funds provisions.

**Grant Records Maintenance:** CPRIT must maintain complete records of each grant application, each grant recipient's financial reports, including matching funds, progress reports, identification of each principal investigator, and CPRIT's review of the grant recipients' financial reports and progress reports. CPRIT shall perform periodic audits of any electronic grant management system used to maintain such records.

**Public Records and Open Meetings:** CPRIT's records are exempt from disclosure under the Texas Public Information Act; however, the records of a nonprofit organization providing support to CPRIT are subject to the Act. Information that is collected or produced in a compliance program investigation are exempt from disclosure if releasing the information would interfere with an ongoing investigation. CPRIT is required to post on its website records that pertain to any gifts, grants, or other consideration provided to CPRIT, its employees or committee members, including the donor's name, amount and date. The Oversight Committee may conduct closed meetings to discuss compliance investigation issues related to fraud, waste, or abuse of state resources.

**Annual Report:** The CPRIT annual report must now include a statement of CPRIT's compliance program activities and a list of any conflicts of interest, recusals, and conflict of interest waivers granted. The CPRIT annual report must also be posted on the internet.

**Cancer Prevention and Research Interest and Sinking Fund:** New Subchapter G establishes a Cancer Prevention and Research Interest and Sinking Fund, which will be a dedicated account in the general revenue fund. This new fund will consist of income from patent, royalty, license fees, other income received under contract, and interest earned on fund investments. This new fund may be used only to pay for debt services on issued bonds.

**Impact:** SB 149 will permit UT System institutions to claim as matching funds, the difference between indirect costs authorized in research grants from the federal government and the indirect costs permitted under the CPRIT grant. UT System institutions will also have additional reporting obligations, including certification of matching funds prior to grant, and progress reporting. Failure to comply with reporting obligations may result in termination of the grant and repayment of funds.

**Effective:** June 14, 2013

BethLynn Maxwell

[SB 328](#) by Carona and Gonzales

Relating to entrepreneurs-in-residence at state agencies.

SB 328 adds a new section to Government Code Chapter 651 providing that a state agency, including an institution of higher education, may hire an entrepreneur-in-residence, or contract with an individual, chamber of commerce or nonprofit entity, to improve outreach, interaction, and transparency between a state agency and the private sector and to implement best private sector practices to make state government programs easier to access and more efficient and responsive to the public.

**Impact:** The bill will impact UT System institutions by permitting each to hire an entrepreneur-in-residence, or contract with an outside individual, chamber of commerce or nonprofit entity to improve services and interaction with the private sector, including historically underutilized businesses.

**Effective:** September 1, 2013

BethLynn Maxwell

[SB 866](#) by Paxton and Elkins, et al.

Relating to authorizing local governments to participate in statewide technology centers.

Chapter 2054 of the Government Code authorizes the Department of Information Resources (“DIR”) to operate statewide technology centers. SB 866 changes Chapter 2054 so that:

DIR would be authorized to establish or expand such statewide technology centers to include participation by local governments (including an entity supervising performance of an interlocal agreement between two or more local governments); such statewide technology centers would not be authorized to provide information resources technologies related to telecommunications services, advanced communications services, and information service as those terms are defined in the Federal Communications Act (Chapter 5 of Title 47 of the United States Code); and the scope of operation of such statewide technology centers can include the deployment, development and maintenance of software applications.

**Impact:** Chapter 2054 of the Government Code allows university systems and institutions of higher education to participate in statewide technology centers. The changes that SB 866 makes to Chapter 2054 of the Government Code may provide opportunities for mutually beneficial participation in statewide technology centers by UT System, UT institutions and adjacent local governments.

**Effective:** May 18, 2013

Scott Patterson

## Utilities

[HB 1772](#) by Turner, Chris, et al. and Davis

Relating to the disconnection of electric or gas utility service.

HB 1772 adds Section 92.302, Subchapter G, Chapter 92, Property Code, to require a *customer* to provide written notice of service disconnection to each tenant or owner at a *nonsubmetered master metered multifamily property* (and, if the property is located in a municipality, to the governing board of that municipality) not later than 5 days after the customer receives notice of disconnection from an electric service provider or a gas utility. “*Customer*” means a person who is responsible for bills received for electric utility service or gas utility service provided to nonsubmetered master metered multifamily property. “*Nonsubmetered master metered multifamily property*” means an apartment, a leased or owner-occupied condominium, or one or more buildings containing at least 10 dwellings that receive electric utility service or gas utility service that is master metered but not submetered.

HB 1772 also adds Subchapter E, Protection Against Utility Service Disconnection, Chapter 17 Customer Protection, Utilities Code, to require a retail electric provider (REP) or a vertically integrated electric utility (VIEU) (not including a municipally owned utility or an electric cooperative) in an area where customer choice has not been introduced to send written notice of service disconnection to a municipality before the REP or VIEU disconnects service to a nonsubmetered master metered multifamily property for nonpayment if (1) the property is located in the municipality, and (2) the municipality establishes an authorized representative to receive the notice.

In addition, HB 1772 adds Subchapter H, Protection Against Utility Service Disconnection, Chapter 104, Utilities Code, to require a gas utility to send written notice of service disconnection to a municipality before the utility disconnects service to a nonsubmetered master metered multifamily property for nonpayment if (1) the property is located in the municipality, and (2) the municipality establishes an authorized representative to receive the notice.

**Impact:** This bill may impact UT institutions that are responsible for bills received for electric utility service or gas utility service at *nonsubmetered master metered multifamily properties* by requiring those institutions to give various notices of electric and gas service disconnection. This bill may also impact property managers that operate UT-owned *nonsubmetered master metered multifamily properties*.

**Effective:** January 1, 2014

Dana Hollingsworth

[HB 1951](#) by Thompson, Senfronia and Carona

Relating to the licensing and regulation of telecommunicators; providing a criminal penalty.

This bill authorizes the Texas Commission on Law Enforcement to more stringently regulate telecommunicators - commonly known as police dispatchers.

First, the bill requires the Commission to establish training standards for dispatchers.

Second, the bill allows the Commission to issue or revoke the license of dispatcher training schools, operate such schools by itself, and consult with other agencies as they develop appropriate training programs.

Third, the bill forbids an agency from employing a dispatcher unless the dispatcher holds a telecommunicator license issued by the Commission or agrees to obtain one within one year of hire (and then actually obtains one within that time).

Fourth, the bill requires an agency to notify the Commission no later than 30 days after it hires a dispatcher.

Fifth, if an agency hires a dispatcher more than 180 days after he/she last served as a dispatcher, the bill directs the agency to keep on file the dispatcher's new criminal history information and two completed fingerprint cards.

Sixth, the bill allows the Commission to issue a telecommunicator license to a person who submits an application, completes training, passes a required exam, and satisfies other applicable Commission rules.

Finally, the bill requires an employer to provide each dispatcher at least 20 hours of Commission-approved training within each two-year period.

**Impact:** UT institution police departments should review their job descriptions for dispatchers to ensure they conform to the changes in the law. The UT System Police also should monitor regulatory developments and advise UT institution police departments about developments, since the Commission will issue further rules on dispatchers by the end of 2013. Finally, UT institution police departments should determine if they must devote additional resources to training, especially if they do not already provide or pay for at least 20 hours of training for dispatchers every two years.

**Effective:** This Act takes effect January 1, 2014, except Section 12 takes effect September 1, 2013.

Omar A. Syed

[HB 2049](#) by Huberty, et al. and Williams

Relating to a qualifying cogeneration facility's ability to sell electric energy to multiple purchasers.

HB 2049 amends Section 31.002(13), Utilities Code, to provide that a *qualifying cogenerator* that provides electricity to a *purchaser* of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or power generation company.

HB 2049 also adds Section 37.0521 Exception for Retail Sales for Certain Qualifying Cogenerators, Subchapter B CERTIFICATE OF CONVENIENCE AND NECESSITY, Chapter 37 CERTIFICATES OF CONVENIENCE AND NECESSITY, Utilities Code, to (1) authorize a qualifying cogenerator to sell electric energy at retail to more than one purchaser of the cogenerator's thermal output, and (2) exclude such a qualifying cogenerator from regulation as a retail electric provider, power generation company, or retail electric utility. Section 37.0521 does not apply in an area in which customer choice has not been adopted and where a municipally owned utility or an electric cooperative is certificated to provide retail electric utility service, or in an area that is served by an electric utility that operates solely outside of ERCOT.

**Impact:** If a UT institution is a qualifying cogenerator it may provide electricity to more than one purchaser *under certain circumstances* without being regulated as a retail electric provider, power generation company or retail electric utility.

**Effective:** September 1, 2013

Dana Hollingsworth

[HB 2105](#) by Lucio III and Lucio

Relating to municipally owned utility systems; authorizing the imposition of fees by a utility board of trustees.

HB 2105 amends Section 1502.002(a), Chapter 15 PUBLIC SECURITIES FOR MUNICIPAL UTILITIES, PARKS, OR POOLS, Government Code, to expressly permit a municipality to acquire, purchase, construct, improve, enlarge, equip, operate, or maintain, *channels or bodies of water known as resaca*, with respect to a utility system, a park or a swimming pool. HB 2105 also adds Section 1502.057(c), Government Code, to permit the board of trustees having management and control of a utility system located in a county contiguous to the Gulf of Mexico and bordering Mexico (which appears to include at least Cameron County) to impose and collect charges authorized under Section 1502.057 for services provided by the utility system. Section 1502.057 provides for the following:

- it requires rates to be equal and uniform,

- it requires utility charges to be in amounts at least sufficient to pay certain expenses of the utility system, and
- it prohibits the provision of free service except for municipal public schools or buildings and institutions operated by the municipality.

**Impact:** HB 2105 may impact UT institutions served by municipally owned utilities in the designated counties (which appear to include at least Cameron County).

**Effective:** June 14, 2013

Dana Hollingsworth

**SB 885** by Hinojosa and Harper-Brown

Relating to notice of utility rate increases.

SB 885 amends Section 104.103, Utilities Code, to permit a gas utility to provide notice of a rate increase by email if (1) the customer's email address is available to the utility, and (2) the customer has consented in writing to the use of the customer's email address for that purpose.

**Impact:** As a result of SB 885, UT institutions may have the opportunity to elect to receive notices of gas utility rate increases by email.

**Effective:** September 1, 2013

Dana Hollingsworth

### **Trusts, Estates, and Charitable Organizations**

**HB 2380** by Davis, Sarah and Taylor

Relating to a provision in a will or trust that would cause a forfeiture of or void an interest for bringing any court action, including contesting the will or trust.

Before HB 2380, Probate Code Section 64 and Estates Code Section 254.005 provided that a no contest or forfeiture clause contained in a will is unenforceable against a beneficiary who brings court action contesting the will if the court action was brought with just cause and brought and maintained in good faith. An identical provision was contained in Property Code Section 112.038 with regard to the enforceability of a no contest or forfeiture clause in a trust.

HB 2380 amends all of these sections to provide that a court must determine by a preponderance of evidence that the court action contrary to the no contest or forfeiture

clause was brought and maintained in good faith and that just cause existed for bringing the action.

**Impact:** The new law requiring preponderance of evidence has the same impact on UT System as it has on any person who contests a provision in a will or trust that contains a no contest or forfeiture clause. If UT System does file a contest of a will or trust which makes provisions in favor of UT System and which contains a no contest or forfeiture clause, this new law would apply and such contest by a preponderance of evidence must be based upon just cause and brought and maintained in good faith. The changes in the Probate Code and the Property Code are effective on September 1, 2013. The change in the Estates Code is effective on January 1, 2014.

**Effective:** January 1, 2014

Donald O. Jansen

[HB 2912](#) by Thompson, Senfronia and Rodriguez

Relating to decedents' estates.

HB 2912 makes numerous miscellaneous changes to the Estates Code which replaces the Probate Code on January 1, 2014. The following are the more significant changes:

- Section 53.104 dealing with the statutory probate court's power to appoint an attorney ad litem makes several changes for what persons to appoint an attorney ad litem: (a) to represent the interests of any person and not just the persons listed in that section, (b) addition of representing a missing heir, (c) addition of representing an unknown or missing person for whom cash is deposited in the court's registry and (d) clarifying that a person who has a legal disability refers to disability under both state and federal law. Current subsection (b) states that an attorney ad litem is entitled to reasonable compensation to be taxed as costs of the proceeding. The amendment adds additional language stating that the court can order the compensation paid out of the estate or by any party. In the case of cash deposit for an unknown or missing person, the court shall order compensation paid out of the deposit.
- Section 202.009, rather than permissive, now requires a court to appoint an attorney ad litem in a proceeding to declare heirship. Also the court may appoint an ad litem for an incapacitated person if the court finds that the appointment is necessary to protect the interests of the heir.
- A new Section 111.054 states that, notwithstanding the choice of law or other contractual provision in an agreement prepared and provided by a contracting third party financial institution, insurance company, plan custodian, or plan administration, the Texas law applies to determine whether a nontestamentary transfer has occurred and the ownership of the money or benefits following the possible nontestamentary transfer. This is true only if more than 50% of the money in the account of a financial institution, a retirement account or similar arrangement or the benefits due under an

insurance contract, annuity contract, beneficiary designation or similar arrangement immediately before a nontestamentary transfer was owned by a person domiciled in Texas. This section applies to community survivorship agreements and multiple-party accounts. “Contracting third party” is defined in new subsection (1) of Section 111.051. These sections only apply to persons who die after the effective date.

- Sections 201.051 and 201.052 deal with maternal and paternal inheritance, respectively. Both sections are amended to provide that the biological mother and father are not the heirs if a child has intended parents, as defined by Section 160.102 of the Family Code under a gestational agreement validated under Subchapter I, Chapter 160 of the Family Code. Then the child is the child of the intended mother and father unless the biological mother or father is also the intended parent.
- A new Section 202.0025 provides that a proceeding to declare heirship of a decedent may be brought at any time after the decedent’s death notwithstanding Section 16.051, Civil Practice and Remedies Code.
- Current Section 204.151 provides that genetic testing to declare heirship of a decedent may be filed with respect to a biological child of the decedent or with respect to a person claiming to be an heir of a biological child of the decedent if the decedent parent-child relationship had not been established under the Family Code Section 160.201. Current Section 204.152 allows rebuttal evidence to the results of the genetic testing. The bill has amended both sections to allow genetic testing to declare heirship of the decedent without regard to whether a parent-child relationship had been established under the Family Code. But the new law incorporates by reference the genetic testing provisions, presumptions and rebuttals allowed under Family Code Section 160.505 to be used for genetic testing in the probate court.
- Section 301.155 has been amended to allow proof for issuance of letters testamentary or of administration to be provided by sworn testimony of a witness with personal knowledge of the facts either in open court or by deposition if it is proved to the court under oath that the witness is unavailable.
- A new Section 305.004 requires the bond of an executor or administrator to be filed before 21 days after the date of the order granting or modifying the letters testamentary or of administration. If the court does not approve the bond within 21 days after the bond is filed, the person appointed personal representative may file a motion requiring the judge to specify for the record the reason(s) for failure to act on the bond. The hearing on the motion must be within 11 days after the motion is filed.
- Section 309.056 allows a will to specifically prohibit the personal representative from filing an affidavit in lieu of an inventory. An independent executor is not liable for choosing the filing of either an affidavit or an inventory. New Section 309.057 allows any interested party or the court on its own motion to have a personal representative cited for failure to file an inventory or an affidavit in lieu thereof. If the personal representative does not comply, the court on hearing may fine the personal

representative \$1,000. Also in such cases, the personal representative is liable for all damages and costs sustained in enforcing filing of the inventory or affidavit.

- Section 361.155 is amended to require that any inventory filed by a successor personal representative show assets at fair market value at the date of the successor's qualification. If no inventory has been filed by the predecessor personal representative, the successor shall file the original inventory as provided in Section 309.051(b).
- Current Section 401.004 establishes the rules for distributee consent for an independent administration under a will. If a trust created by the will is a distributee, subsection (d) currently requires the consent of the income beneficiaries. The new law includes inter vivos trusts into which the will pours over assets and requires the consent of persons who receive trust property at the decedent's death as well as current income beneficiaries.
- New Section 404.003 allows a court on its own motion or the motion of an interested party to remove an independent executor without notice if such executor cannot be served (because whereabouts are unknown, eluding service or nonresident without an agent for service of process) OR sufficient grounds to support belief that the independent executor has misapplied or embezzled (or is about to do so) property of the estate. New Section 404.0035 allows such removal by the court with 30 days' notice if the executor neglects to qualify OR fails to return an inventory or file an affidavit within 90 days after qualification.

**Impact:** These Estates Code changes do not directly impact UT System but will have a general impact on UT System to the extent it is a beneficiary under a will.

**Effective:** January 1, 2014

Donald O. Jansen

[HB 2913](#) by Thompson, Senfonia and Rodriguez

Relating to Trusts.

HB 2913 makes miscellaneous trust changes to the Property Code and Tax Code, the most significant being a decanting provision allowing the trustee without judicial approval to distribute assets from one trust to a second trust. The amendments to the Tax Code are not applicable to UT System.

Amendments to the Property Code are as follows:

- The definition of property which is eligible to be placed into a trust in Section 111.004(12) is amended to include property held in any digital or electronic medium.

- Section 112.035 deals with spendthrift trusts which generally states that the settlor's creditors may reach the settlor's beneficial interest in the trust. the bill makes several exceptions to the general rule:
  - The settlor's beneficial interest in a trust created by the exercise of a power of appointment by a third party is protected from settlor's creditors.
  - Property contributed to certain trusts are not considered as being contributed by the settlor for spendthrift purposes:
    - 1) An irrevocable inter vivos marital deduction trust for the settlor's spouse with the settlor being the beneficiary after the spouse's death.
    - 2) Any irrevocable inter vivos trust for the settlor's spouse if the settlor is the beneficiary after the spouse's death.
    - 3) An irrevocable trust for the benefit of a person who is the spouse of the settlor.
- New subsections (b-1) and (b-2) of Section 115.002 cover venue if there are multiple noncorporate trustees;
  - If the noncorporate trustees maintain a principal office for the trust, venue is the county where trustees maintain the principal office OR the county of administration of the trust maintained at any time during the 4 year period preceding the date action is filed.
  - If the noncorporate trustees do not maintain a principal office, venue is the county where any trustee resides or has resided at any time during the 4 years preceding the date the action is filed OR the county of administration of the trust maintained at any time during the 4 year period preceding the date the action is filed.
  - "Principal office" for multiple noncorporate trustees in an office in which one or more trustees conduct trust business but which is not the personal residence of any trustee.
- New Sections 112.071 through 112.089 are added to the property Code allowing nonjudicial decanting by a trustee
  - Section 112.072 allows a trustee (who is not the settlor) with full discretion to make full distributions to trust beneficiaries (in good faith, in accordance with the terms of the first trust and in the interests of the beneficiaries) to make a distribution of all or part of the trust principal to the trustee of a second trust for the benefit of one or more current beneficiaries of the first trust and for the benefit of one or more successor or presumptive remainder beneficiaries of the first trust. The second trust may include a power of appointment for a

current beneficiary with the class of appointees which may be broader than or different from the class of beneficiaries under the first trust.

- Section 112.073 involves trustees (other than the settlor) of the first trust with limited discretion or power of distribution to beneficiaries of the first trust. Such limited discretion trustee may distribute (in good faith, in accordance with the terms of the trust, and in the interests of the beneficiaries) all or part of the principal of the first trust to the trustee of the second trust subject to these additional requirements: (1) the current and the successor remainder beneficiaries of the second trust must be the same as of the first trust, (2) the distribution language of the second trust must be the same as the language of the first trust, (3) if the first trust grants a power of appointment to a beneficiary, the second trust must grant the same power of appointment to the same beneficiary of the second trust with the class of appointees being the same in the second trust and (4) the exercise of the power of distribution is subject to Section 113.029 concerning discretionary powers and tax savings.
- Section 112.074 provides that the trustee of the first trust may exercise the distribution powers of Section 112.072 and Section 112.073 without the consent of the settlor or beneficiaries of the first trust and without court approval if the trustee, not later than 30 days before the transfer, (1) gives notice to all current and presumptive remainder beneficiaries ( who can be found), the guardian of the beneficiary, the parent of a minor without an appointed guardian, and, if a charity is a beneficiary, the Texas AG must also receive notice, (2) gives notice of intent to transfer, that the beneficiary may object and petition court to stop or modify, and the date of transfer and manner of transfer.
- Section 112.078 states that a court may be involved in the proposed transfer. The trustee of the first trust may petition the court to order distribution to the second trust if the non-judicial power is not available for some reason. If a beneficiary gives written objection to the trustee before the effective date of the proposed transfer, the trustee or beneficiary may petition the court to approve, modify, or deny the distribution with the trustee having the burden to show the exercise furthers the purpose of the trust.
- Section 112.085 prohibits the trustee of the first trust to make such distributions if the governing instrument of the first trust prohibits such distributions.
- Section 112.084 contains a list of situations in which the power of distribution may not be exercised including reducing, limiting or modifying vested rights of a beneficiary, materially limiting the trustee's fiduciary duties, indemnifying the trustee from liability of negligence, limit the perpetuities provisions of the trust unless the trust so authorizes, and changing the right to remove the trustee.

- Section 112.086 prohibits the first trustee from exercising the distribution power if it would prevent or reduce contributions to the first trust from qualifying for federal tax benefits (including annual exclusion, the marital deduction, and charitable deduction). If the first trust is a federal grantor trust for income tax purposes, the second trust need not be. Sub S stock in the first trust may not be transferred to a second trust if the second trust is not a permitted shareholder under federal law. If the first trust is subject to the required minimum distribution rules, the second trust cannot shorten the minimum distribution period of distributions.
- Section 112.087 prohibits the trustee of the first trust from making distribution solely to change the trustee's compensation. However, this can be done by court order. If the distribution is for another valid and reasonable purpose, the second trust can bring the trustee's compensation into conformance with reasonable limits authorized by state law.

**Impact:** Only the decanting provision could have an impact on UT System if it or any of its component institutions are beneficiaries of a trust which the trustee wishes to distribute to a second trust. UT System interest could be impacted if the trustee had full discretion or UT System is a remote contingent beneficiary. The Other provisions of the new law have the same impact on UT System as they have upon the general public.

**Effective:** September 1, 2013

Donald O. Jansen

[SB 778](#) by Carona and Clardy

Relating to trusts.

The new statute amends Property Code Section 113.053(f)(2) and (3) authorizing a corporate trustee, subject to its fiduciary duties, to purchase insurance underwritten or distributed by an affiliate, a division of the fiduciary or a syndicate which includes the fiduciary or an affiliate unless prohibited by the trust instrument. The person conducting the transaction must be appropriately licensed. Also the insurance product and premium must be the same or similar to a product and premium offered by nonaffiliated entities.

The new statute amends Property Code Sections 116.201 and 116.202, which previously required trustee compensation to be allocated equally between income and principal, to allow the trustee, consistent with the trustee's fiduciary duties, to allocate a portion, none or all of the trustee compensation to income or principal.

The above changes apply only to trusts existing or created on or after the effective date and then only to acts or omissions occurring on or after the effective date.

**Impact:** This new law only applies to UT System as it would apply to any other person serving as trustee or who is a trust beneficiary. The Board of Regents may be a trustee of a charitable remainder trust or a wholly charitable trust. The current Board

policy is that the Board does not charge trustee fees. But the income allocation requirement could apply if that policy would change. Also these rules would impact UT System as a beneficiary of a trust, particularly if the Board of Regents is not serving as trustee

**Effective:** September 1, 2013

Donald O. Jansen

**SB 1240** by Duncan and Keffer

Relating to the partition of mineral interests of a charitable trust.

New Sections 124.001 and 124.002 are added to the Property Code which would prohibit compulsory partition by a joint owner or claimant of any mineral interest owned by or claimed by a charitable trust. An exception to this prohibition is where the charitable trust has refused to execute a mineral lease, the terms of which are fair and reasonable, to the plaintiff or petitioner in the proceeding.

- A “charitable trust” is a charitable entity, a trust the stated purpose of which is to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity.
- A “charitable entity” is a corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or other civic or public purpose by Internal Revenue Code Section 501(c)(3).
- “Mineral interest” includes any interest in oil, gas, or other mineral substance in place or that otherwise constitutes real property without regard to the depth at which the mineral substance is found.
- The new statute applies to partition actions commenced on or after the effective date.

**Impact:** This new statute would exempt UT System, subject to the stated exception, from the general rule that a joint owner or claimant of mineral interests may compel a partition among the joint owners or claimants. Although UT System is not exempt from taxation under IRC Section 501(c)(3) [it is exempt under the intergovernmental immunity doctrine], it is a scientific and educational institution described in Section 501(c)(3). Although UT System cannot be forced into a partition of jointly owned mineral interests, it could agree to a partition or force the other joint owners (who are not charities) into a partition.

**Effective:** June 14, 2013

Donald O. Jansen

## Insurance and Risk Management

[HB 586](#) by Workman, et al. and Deuell

Relating to the waiver of sovereign immunity for certain design and construction claims arising under written contracts with state agencies.

HB 586 waives sovereign immunity to suit for state agencies, including institutions of higher education, for the purpose of adjudicating a claim for breach of a written contract executed after September 1, 2013, for engineering, architectural, or construction services or for materials related to engineering, architectural, or construction services in which the amount in controversy is not less than \$250,000, excluding penalties, costs, expenses, prejudgment interest and attorney fees. The total amount of money that can be awarded is limited by: (1) the balance due and owed by the state agency under the contract; (2) the amount owed for written change orders; (3) reasonable and necessary attorney fees if attorney fees are available to all parties in the contract; and (4) interest at the rate specified by the contract or if unspecified, the rate for post-judgment interest under the Finance Code, but not to exceed 10%. Damages may not include consequential or exemplary damages and damages for unabsorbed home office overhead. Judgments may not be paid from funds appropriated to the state agency from general revenue unless specifically appropriated for that purpose; further, state property will not be subject to seizure, attachment, or garnishment or any other remedy to satisfy a judgment. Before January 1 of each even numbered year, each state agency shall report to the governor, the comptroller, and each house of the legislature the cost of defense to the institution and the Attorney General in an adjudication brought against the agency; the report shall include the amount claimed in any adjudication pending on the date of the report.

**Impact:** This bill allows contractors to bring suit against the university without obtaining legislative consent for breach of engineering, architectural, or construction contracts executed after September 1, 2013 with damages of \$250,000 or more. A party seeking to enforce a university contract through litigation will be limited to recovering actual damages as specified in the bill, attorney fees if such fees are available to all parties in the contract, and interest at the rate specified in the contract. Construction/engineering/architectural contract templates should be reviewed for any needed modifications resulting from this legislation prior to its effective date. The bill also includes required reporting by the institution for such litigation.

**Effective:** September 1, 2013

Helen Bright

[HB 1869](#) by Price, et al. and Duncan

Relating to contractual subrogation and other recovery rights of certain insurers and benefit plan issuers.

HB 1869 places a limit on the amount certain health insurance plans can claim as a lien against a third party settlement that an injured person receives from a tort-feasor (the person or entity responsible for the injury) to cover the cost of the health care services that the health plan provided to the injured person. The bill applies to certain types of health insurance, including the UT System employee health plan (UT SELECT) and other state employee government plans, as well as fully funded employer health plans issued in Texas. It will not affect self-insured ERISA plans, Medicare plans, Medicaid plans, CHIPS, and workers compensation plans.

Under the law, if the injured person was represented by an attorney in the action that led to the settlement with the tort-feasor, then the most the health plan can take is 1/3 of the injured person's total settlement. If the injured person was not represented by an attorney, then the most the health insurance plan can take is 50% of the settlement.

**Impact:** This bill will limit how much the UT System's health plan can recover from participants in the UT SELECT plan for medical expenses the plan paid on behalf of the participant. It may also affect the ability of UT System hospitals to recover on liens that are placed on behalf of the hospitals on certain patients for unpaid medical bills

**Effective:** January 1, 2014

Barbara Holthaus

[HB 2035](#) by Vo and Eltife

Relating to the shared work unemployment compensation program.

HB 2035 makes several updates to the shared work unemployment compensation program to comply with updated federal law.

The bill amends Labor Code Section 204.022 by adding Subsection (f), prohibiting shared work benefits paid under Chapter 215 from being charged to the account of an employer if the benefits are reimbursed by the federal government under the federal Layoff Prevention Act of 2012.

The bill also amends Labor Code Section 215.001 by redefining "fringe benefit" and defining "training" under the statute.

It amends Labor Code Section 215.022 by adding requirements for the approval of a shared work plan including a description of how employees will be notified in advance of the plan and an estimate of the number of employees who would be laid off if the employer did not participate in the plan. It eliminates the requirement for the employer to

describe the manner in which the participating employer treats the fringe benefits of each affected employee, and it allows eligible employees to participate in training.

The bill further amends Section 215.022 by requiring employers to certify that the implementation of the shared work plan and the resulting reduction in work hours is in lieu of layoffs, rather than temporary layoffs, that fringe benefits will continue for affected employees if they continue for unaffected employees, and that employers' participation in the plan is consistent with employers' obligations under state and federal law. It also adds the requirement that employers agree to furnish any information the United States secretary of labor determines is appropriate, and removes the prohibition from shared work plans being implemented to subsidize an employer who has traditionally used part-time employees.

The change in law applies only to a shared work plan submitted by an employer to the Texas Workforce Commission on or after September 1, 2013.

**Impact:** UT System institutions planning to enroll in shared work unemployment compensation programs need to be aware of the changes made to the requirements and rules of the program. Shared work plans submitted before the effective date of this bill will not be affected by the bill.

**Effective:** September 1, 2013

Omar Syed

[SB 21](#) by Williams and Creighton, et al.

Relating to drug screening or testing as a condition for the receipt of unemployment compensation benefits by certain individuals.

First, this bill requires the Texas Workforce Commission to implement a drug screening and testing program for persons who apply for unemployment benefits, and requires applicants to take required drug screenings and tests.

Second, the bill deems persons ineligible for benefits if they fail a drug test, but restores their eligibility if they pass a subsequent test four or more weeks later.

Third, the bill notes that certain unemployed persons can suitably work only in jobs that regularly conduct pre-employment drug testing, and makes those persons ineligible for benefits unless they comply with the TWC's drug screening and testing programs.

Finally, the bill allows an applicant to receive unemployment benefits even after failing a drug test, as long as the person is already participating in a drug abuse treatment program, enrolls in such a program within seven days after being notified of the failed drug test, or failed the test because of taking a substance prescribed by a physician.

**Impact:** This bill could make fewer former UT institution employees eligible for unemployment benefits. If that occurs, the bill may very modestly decrease the

unemployment benefits premiums paid by UT institutions to the UT System Unemployment Compensation Insurance Fund.

**Effective:** September 1, 2013

Omar A. Syed

[SB 1484](#) by Watson, et al. and Gonzales, Larry, et al.

Relating to health benefit plan coverage for enrollees diagnosed with autism spectrum disorder.

This bill amends Chapter 1355 of the Texas Insurance Code, to remove the age limit currently associated with coverage requirements for health benefit plan participants diagnosed with autism spectrum disorder, effectively shifting the current requirements related to autism spectrum disorder to be applicable to any health benefit plan enrollee regardless of age.

**Impact:** This bill will not impact the UT System employee health plan, which is not subject to Chapter 1355 of the Insurance Code. It may increase the health insurance coverage available to patients that seek treatment for autism related disorders from UT System institutions. This includes, but may not be limited to, the Callier Center for Speech and Hearing Disorders at UT Dallas, which relies on insurance billing for revenue.

**Effective:** September 1, 2013

Barbara Holthaus

[SB 1525](#) by Zaffirini and Patrick, Diane

Relating to including disability awareness training in risk management programs required for members and advisors of student organizations at postsecondary educational institutions.

SB 1525 amends Section 51.9361(g) of the Education Code by adding a requirement that risk management programs for members and advisors of student organizations must address issues regarding persons with disabilities, including a review of applicable requirements of federal and state law, and any related policies of the institution, for providing reasonable accommodations and modifications to address the needs of students with disabilities, including access to the activities of the student organization.

This bill applies to risk management programs provided at a public or private postsecondary educational institution for the 2013-2014 academic year.

**Impact:** UT System academic institutions should become familiar with this new requirement and plan to incorporate it into their 2013-2014 risk management programs for members and advisors of student organizations.

**Effective:** June 14, 2013

Melissa V. Garcia

**SB 1537** by Deuell and Cortez

Relating to certain required notices under the Texas Unemployment Compensation Act, including employer liability arising from failure to provide the notice.

Under existing law, certain employers, known as “reimbursing” employers, must reimburse the Texas Workforce Commission for unemployment benefits the TWC pays to the employer’s former employees.

This bill will require employers who receive an unemployment benefits claim to issue an initial response that includes timely sufficiently detailed written information to allow the TWC to decide if the person should receive benefits.

If an employer fails, without good cause, to provide the information and then reimburses the TWC too much for the claim, this bill will prevent the TWC from refunding the overage to the employer.

Finally, if the employer fails, without good cause, to provide this information and then reimburses the TWC too little for the claim, this bill will treat the reimbursement as if it had never been made to the TWC.

**Impact:** This bill will put a greater onus on UT System’s Office of Risk Management (ORM), since it administers the UT System Unemployment Compensation Insurance Fund on behalf of the UT institutions. As a result, ORM will need to review its initial responses to unemployment claims, and edit them to ensure they contain enough factual details to enable the TWC to make a determination on the claim.

**Effective:** October 1, 2013

Omar A. Syed

## **Alcohol**

**HB 893** by Geren and Hancock

Relating to consumption of alcoholic beverages in certain public entertainment facilities.

HB 893 adds a new statute to Chapter 108, Subchapter C of the Alcoholic Beverage Code (“ABC”) governing alcoholic beverage consumption in stadiums that meet all of the following criteria:

- Located in a county with a population of more than 1.6 million.

- Constructed not later than 1994.
- Have a seating capacity of at least 45,000.
- All alcoholic beverage permits and licenses are held by a single independent concessionaire.

The new statute permits the independent concessionaire for such a stadium to allow patrons possessing an alcoholic beverage in an open container to enter or leave any premises within that stadium that is licensed or permitted under the ABC so long as the beverage:

- was purchased legally at a licensed or permitted premises within the facility,
- appears to be possessed for current consumption, and
- remains within the confines of the stadium, excluding the stadium's parking lots.

**Impact:** Any UT institutions with stadiums meeting the criteria set forth in the new statute added by HB 893 will need to ensure that the operation of that stadium is in compliance with the requirements of that statute.

**Effective:** May 18, 2013

Scott Patterson

[HB 3572](#) by Hilderbran, et al. and Williams

Relating to the administration, collection, and enforcement of taxes on mixed beverages; imposing a tax on sales of mixed beverages; decreasing the rate of the current tax on mixed beverages.

HB 3572 modifies the Tax Code to:

- change the tax rate under Chapter 183 of the Tax Code that is placed on gross receipts obtained by various alcoholic beverage permittees from the sale of mixed beverages;
- add a new mixed beverage sales tax to Chapter 183 of the Tax Code; and
- provide that mixed beverages, ice, or nonalcoholic beverages and the preparation or service of these items are exempt from the sales, excise, and use taxes set forth in Chapter 151 of the Tax Code only if those items are taxed under the mixed beverage gross receipts tax or the mixed beverage sales tax set forth in Chapter 183 of the Tax Code.

**Impact:** The various UT System and institutional offices that manage the use and sale of alcoholic beverages at UT facilities will need to ensure compliance with the changes made by HB 3572.

**Effective:** January 1, 2014

Scott Patterson

[SB 1035](#) by Carona and Smith

Relating to alcoholic beverage license applications and fees.

- SB 1035 changes Chapter 61 of the Alcoholic Beverage Code to:
- allow applications, orders, and judgments related to a license to manufacture, distribute, store, or sell beer to be filed directly with the Alcoholic Beverage Commission (“ABC”) instead of through the applicable county judge or county tax assessor/collector;
- provide the ABC with the authority to issue licenses to manufacture, distribute, store, or sell beer (including renewals of such licenses), investigate protests against applications for such licenses, and reject such licenses and require a hearing by the applicable county judge based on a protest (as well as increase the fee for such a hearing to \$25);
- require a county judge to set a hearing for a protest to an application for a license to manufacture, distribute, store, or sell beer within 5 to 10 days after the county judge receives the protested application;
- authorize the ABC to (a) determine by rule the electronic forms of payment it will accept for license fees, (b) refund license fees if the ABC or its administrator rejects the application for that license, and (c) establish by rule a method for transmitting 5% of each license fee to the tax assessor/collector of the applicable county in which the license applicant’s business is located;
- allow license fees to be paid by a check on the account of a corporation that is the agent for the person applying for a license; and
- only require original applicants for a license to manufacture, distribute, or sell beer (and not applicants for a renewal of such a license) to provide public notice of that application, as well as change the requirements for such notice.

Furthermore, SB 1035 modifies the manufacturer’s license provisions in Chapter 62 of the Alcoholic Beverage Code to provide that the Commission, its administrator, or a county judge cannot approve applications for such a license unless accompanied by the applicant’s sworn statement that the applicant will be engaged in the business of brewing and packaging beer in Texas in quantities sufficient to make the applicant's operation a bona fide brewing manufacturer within three years of the issuance of the original license.

Finally, SB 1035 modifies the brewpub license provisions in Chapter 74 of the Alcoholic Beverage Code to provide that the Commission, its administrator, or a county judge cannot approve applications for such a license unless accompanied by the applicant's sworn statement that the applicant shall be engaged in the business of brewing and packaging malt liquor, ale, or beer in this state in quantities sufficient to operate a brewpub not later than six months after the date of issuance of the original license.

**Impact:** The UT System and UT institutional offices that manage the use of alcoholic beverages on the property and buildings owned or controlled by UT System and the UT institutions will need to ensure that their operations are in compliance with the applicable changes made by SB 1035.

**Effective:** September 1, 2013

Scott Patterson

[SB 1090](#) by Carona and Geren, et al.

Relating to the manufacture, distribution, sale, and provision of alcoholic beverages and the regulation of those activities.

SB 1090 makes various changes to the Alcoholic Beverage Code ("ABC") including:

- clarifying various defined terms used in the ABC, revising the ABC to use gender-neutral terminology, and clarifying the identities and authorities of the Alcoholic Beverage Commission and of Alcoholic Beverage Commission officials;
- providing discretion to the Attorney General concerning the appointment of assistant attorneys general to assist the Alcoholic Beverage Commission in enforcing the ABC;
- providing that holders of a wine and beer retailer's off-premise permit can sell such beverages for off-premises consumption only, but only if sold in unbroken original containers;
- establishing a 5-day grace period during which a person may engage in the activities of the holder of an agent's permit under Chapter 35 of the ABC or of the holder of a manufacturer's agent's permit under Chapter 36 of the ABC while such a permit is being procured;
- allowing original applicants for a license to manufacture, distribute, or sell beer at retail to give notice of such an application by publication in a newspaper (rather than posting at the courthouse door) and eliminates the requirement that applicants for a renewal of such a license must publish such notice;
- eliminating the requirement that a holder of a wholesaler's or class B wholesaler's permit may prearrange a promotional activity only for distilled spirits or wine;

- allowing alcoholic beverage permittees to preannounce the purchase of wine, distilled spirits, ale, or malt liquor to a consumer;
- allowing alcoholic beverage manufacturers or distributors to preannounce promotions and the purchase of beer to consumers;
- requiring draft malt liquor or ale to only be dispensed through faucets or other dispensing apparatus that is equipped with a sign clearly indicating the name or brand of the product being dispensed through the faucet or apparatus;
- authorizing persons of 18, 19, or 20 years of age to obtain a manufacturer's agent's permit under Chapter 36 of the ABC;
- allowing manufacturers and distributors and their personnel to publish or disseminate an ad for a brewery product that refers to the alcohol content of the product;
- authorize holders of brewer's or nonresident brewer's permits and manufacturer's and nonresident manufacturer's licenses (or such a permittee's or licensee's agent or employee) to package alcoholic beverages in combination with other items if the package is designed to be delivered intact to a wholesaler or distributor and the additional items are branded and have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales;
- allowing all members of the manufacturing or wholesale tiers established under the ABC (and not merely wineries) to include information in their advertising informing the public of where their products may be purchased, but prohibits members of the manufacturing and wholesale tier (and not merely wineries) from giving compensation to or receiving compensation from a licensed or permitted member of the wholesale or retail tier for such advertising;
- authorizing the holder of a manufacturer's or nonresident manufacturer's license or a nonresident seller's permit to display a branded promotional vehicle on the licensed or permitted premises of a retailer, whether outside or inside a structure on the premises, for not more than five hours per day;
- changing how sales by brewpub licensees are included in the taxation of "first sales" of (a) ale and malt liquor under Subchapter B of Chapter 201 of the ABC and (b) beer under Chapter 203 of the ABC; and
- eliminating provisions in Chapter 31 of the ABC concerning the use of an alcoholic beverage permit in a marine park.

**Impact:** The UT System and UT institutional offices that manage the use of alcoholic beverages on the property and buildings owned or controlled by UT System and the UT institutions will need to ensure that such operations are in compliance with the applicable changes made by SB 1090.

**Effective:** September 1, 2013

Scott Patterson

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## Employment

### [HB 432](#) by Riddle, et al. and Van de Putte

Relating to charitable contributions by state employees to assist domestic victims of human trafficking.

HB 432 amends the Government Code to specify that the Health and Human Services Commission (HHSC), for the sole purpose of administering the program that awards grants to public and nonprofit organizations that provide assistance to domestic victims of trafficking, is considered an eligible charitable organization entitled to participate in the state employee charitable campaign. The bill entitles a state employee to authorize a deduction for contributions to HHSC and authorizes HHSC to use these contributions.

**Impact:** All departments handling charitable contributions on behalf of UT System or its institutions should be aware that HHSC is now an eligible charitable organization.

**Effective:** June 14, 2013

Tamra J. English

### [HB 480](#) by Alvarado and Cortez

Relating to the use of sick leave by state employees who are attending educational activities of their children.

Currently, state law allows state employees to use up to eight hours of sick leave each fiscal year to attend a parent-teacher conference. HB 480 expands this provision to allow parents to attend other school sponsored activities such as tutoring, field trips, classroom programs, academic competitions, et cetera. Employees are required to give reasonable advance notice of their intention to use their sick leave to attend an educational activity.

**Impact:** The Office of Employee Benefits and all supervisory employees should be aware of the changes to Government Code Section 661.206 made by HB 480.

**Effective:** June 14, 2013

Tamra J. English

### [HB 581](#) by Howard, et al. and Lucio

Relating to the waiver of sovereign immunity in certain employment lawsuits by nurses.

By waiving sovereign immunity from suit and liability for hospitals operated by or on behalf of a state or local governmental entity, this bill would permit publicly employed nurses to bring a lawsuit in state court for damages for retaliation for certain advocacy actions, including making a good faith report regarding patient care concerns, requesting

a nursing peer review, refusing to engage in certain conduct or advising a nurse of their rights under the law.

In order to bring such a suit relating to patient care concerns, the nurse must:

- make the report in writing (including electronically) or verbally, if authorized by the employer or entity where the nurse practices;
- make the report to the nurse's supervisor, a committee authorized under state or federal law to receive this report or to an individual or committee authorized by the nurse's employer or another entity where the nurse practices; and
- make the report not later than the 5<sup>th</sup> day after the nurse became aware of the situation if it is a single incident or the 5<sup>th</sup> day after the nurse became aware of the most recent occurrence if the situation involves multiple incidents or a pattern of behavior.

A lawsuit against a state governmental entity shall be in Travis County district court or a county in which all or part of the acts or omissions giving rise to the cause of action occurred. For local governmental entities, suit must be brought in a district court in a county in which all or part of the entity is located.

Provisions of the state whistleblower statute are made applicable with regard to the type of relief available and amount of damages available, time in which relief must be sought and the requirement of using the grievance or appeal procedures before suing.

The relief granted by the bill is in addition to other state or federal law remedies available to a public employee.

**Impact:** Since this bill applies to state and local hospitals, including both general and special hospitals, and mental hospitals, the provisions of this bill will apply to UT hospitals and institutions that employ nurses.

**Effective:** September 1, 2013

Melodie Krane

[HB 2252](#) by Ashby and Nichols

Relating to eligibility of charitable organizations to participate in a state employee charitable campaign.

HB 2252 amends Section 659.146(a) of the Government Code which pertains to the eligibility of a charitable organization to participate in a state employee charitable campaign. Currently, a charitable organization is eligible based on the following:

- 1) The organization's budget does not exceed \$100,000; it provides a Form 990 and an accountant's review that offers full and open disclosure of the organization's internal operations; or
- 2) The organization's budget exceeds \$100,000; and is audited annually in accordance with auditing standards; and
- 3) The organization does not spend more than 25% of its annual revenue for administrative and fund-raising expenses.

HB 2252 amends #1 and #2 above by increasing the amount of \$100,000 to \$250,000.

**Impact:** Any department handling charitable contributions on behalf of UT System or its institutions should be made aware of the increases in the annual budget threshold.

**Effective:** September 1, 2013

Tamra J. English

[SB 217](#) by Patrick, et al. and Anchia

Relating to the continuation and functions of the state employee charitable campaign.

SB 217 amends the Government Code relating to the continuation and operation of the State Employee Charitable Campaign (SECC). SECC is subject to the Sunset Act and will be abolished on September 1, 2013, unless continued by the Legislature. The bill would continue the SECC for four years and would take effect on September 1, 2013. The bill would direct the Comptroller of Public Accounts (Comptroller) to provide administrative support to the State Policy Committee (Committee) including assistance with development and oversight of contracts and the development of SECC's budget.

**Clearly establishes the State Policy Committee's role in leading and overseeing the campaign**

SB 217 requires the State Employee Charitable Campaign Policy Committee (State Policy Committee) to establish the organization and structure of the campaign at the state and local levels, including establishing local campaign areas. The bill also requires the State Policy Committee to develop a strategic plan for and make improvements to the campaign as needed, and ensure donations are appropriately distributed by a federation, fund, or charitable organization that receives money from the campaign.

SB 217 requires the State Policy Committee to enter into a contract with the selected state campaign manager for administration of the campaign. The bill requires the State Policy Committee, in coordination with the state campaign manager, to review and approve an annual campaign plan and budget, including specified costs, and post annual summary information regarding campaign performance on SECC's website. The bill also requires the state campaign manager to assist the State Policy Committee with these functions and to perform other duties required by the contract.

The bill requires the State Policy Committee to develop and use guidelines for evaluation of charity applications based on certain eligibility criteria, and to make these guidelines publicly available. The bill also requires the State Policy Committee, in consultation with the Comptroller, to ensure employee donations are appropriately distributed to charities. SB 217 provides that any change made by the State Policy Committee to the operation of SECC applies only to a state employee charitable campaign conducted on or after January 1, 2014.

### **Restructures the composition and terms of the State Policy Committee**

SB 217 reduces the size of State Policy Committee from 13 to nine members by reducing the number of state employees appointed by the Governor from four to two; reducing the number of retired state employees appointed by the Governor from three to one; and requiring the Lieutenant Governor and Comptroller to appoint three members each. The bill also requires the Governor, Lieutenant Governor, and Comptroller to attempt to appoint members to the State Policy Committee from institutions of higher education and a range of small, medium, and large state agencies. The bill also clarifies that the State Policy Committee, in its membership, must represent employees at different levels of employee classification.

SB 217 specifies that all current State Policy Committee members' terms expire September 1, 2013. By September 2, 2013, the bill requires the Governor to appoint one state employee and one state retiree, and the Lieutenant Governor and Comptroller to appoint one state employee each, and specifies their terms expire September 1, 2014. By September 2, 2013, the bill requires the Governor to appoint one state employee and the Lieutenant Governor and Comptroller to appoint two state employees each, and specifies their terms expire September 1, 2015. The bill specifies the State Policy Committee members serve two-year terms that expire on September 1. The bill also makes conforming changes to implement and reflect the new structure and terms of the State Policy Committee.

### **Requires the Comptroller to provide administrative support to the State Policy Committee**

SB 217 requires the Comptroller to provide administrative support to the State Policy Committee, including assistance in developing and overseeing contracts, developing SECC's budget, auditing charities' distribution of money received from SECC upon request, and other administrative functions.

### **Removes requirements for local employee committees and local campaign managers to exist**

SB 217 eliminates the statutory requirements and specificity for local employee committees and local campaign managers to exist. The bill instead requires the State Policy Committee to establish SECC's structure at the state and local levels, including establishing local campaign areas; appointing any local employee committees considered necessary to assist in evaluating applications from organizations seeking to participate in

SECC only in a local campaign area; and appointing any local campaign managers considered necessary to administer the campaign in a local campaign area. The bill also makes conforming changes to reflect changes made to the local campaign structure and functions, including that the Attorney General shall represent any local employee committee appointed by the State Policy Committee.

SB 217 also provides that if the State Policy Committee appoints a local campaign manager to administer the campaign in a local campaign area, the State Policy Committee may authorize the local campaign manager to charge a reasonable and necessary fee in the same manner provided for the state campaign manager.

### **Restructures the State Employee Charitable Campaign Advisory Committee**

SB 217 restructures the State Employee Charitable Campaign Advisory Committee by specifying that the four members who currently represent federations or funds that are not campaign managers must now represent statewide or local federations or funds generally. The bill also removes the requirement that four members represent campaign managers and instead requires four members to represent other charitable organizations participating in SECC.

SB 217 clarifies the Committee's advisory role by removing the requirements that the Committee recommend the number and geographic scope of the local campaign areas, and that the Committee review and submit the recommended campaign plan, budget, and materials used by campaign managers. The bill adds a requirement that the Committee provide input from charitable organizations participating in SECC to the State Policy Committee.

### **Removes a statutory exemption for certain charities**

SB 217 repeals the statutory exemption that allows charities that have administrative costs that exceed 25 percent of revenues and that participated in the campaign before June 20, 2003 to participate in SECC. The bill specifies this change in the eligibility criteria applies only to the eligibility of a charitable organization to participate in and the use of contributions from a state employee charitable campaign conducted on or after January 1, 2014.

### **Amends and transfers part of SECC's un-codified session law into the Government Code**

SB 217 amends, re-designates, and transfers Section 18.01, Chapter 3 (H.B. 7), Acts of the 78<sup>th</sup> Legislature, 3<sup>rd</sup> Called Session, 2003 to Section 659.146(g), Government Code. The bill provides that a federation or organization that participated in SECC before June 20, 2003, is not barred from participation in the program solely as a result of the changes made by Sections 35, 36, 37, and 121(9) and (11), Chapter 1310 (H.B. 2425), Acts of the 78<sup>th</sup> Legislature, Regular Session, 2003. These Sections of the bill allow certain charities that participated in SECC prior to June 20, 2003, including international charities, to continue to participate under prior eligibility and contribution use provisions.

### **Sunset provision**

SB 217 continues SECC and removes it from future Sunset review.

### **Applies standard Sunset Across-the-Board Recommendations to the State Policy Committee**

SB 217 adds standard Sunset language specifying the grounds for removing a State Policy Committee member and requiring members of the State Policy Committee to complete training before assuming their duties.

### **Technical Change**

SB 217 removes duplicative language stating that a State Policy Committee member may not receive compensation or reimbursements for serving on the Committee.

### **The bill repeals the following statutory provisions.**

Sections 659.131(1), (12), and (14), Texas Government Code

Section 659.140(i), Texas Government Code

Section 659.143, Texas Government Code

Section 659.144, Texas Government Code

Section 18.01, Chapter 3 (H.B. 7), Acts of the 78<sup>th</sup> Legislature, 3<sup>rd</sup> Called Session, 2003.

**Impact:** All departments handling charitable contributions on behalf of UT System or its Institutions should be aware of SB 217. No fiscal impact is anticipated.

**Effective:** This Act takes effect September 1, 2013, except Section 16 of this Act and Section 659.146(g), Government Code, as added by this Act, take effect January 1, 2014.

Tamra J. English

### **SB 1286** by Williams and Hunter

Relating to the regulation of professional employer services; authorizing fees.

The bill amends the Labor Code relating to the regulation of professional employer services and authorizing fees. The bill adds and modifies definitions in Chapter 91 of the Labor Code, and references to "staff leasing services" within the chapter are changed to "professional employer organizations." The bill provides that both a professional employer organization and its client are each considered employers for purposes of sponsoring retirement and welfare benefit plans for covered employees, and imposes certain restrictions and requirements on self-funded health benefit plans offered by professional employer organizations, and allows the Texas Department of Insurance (TDI) to set and collect a fee to defray any administrative costs. The bill further allows a

professional employer organization or its client to obtain workers' compensation insurance for covered employees and specifies the experience rate that is used to determine premiums.

The bill makes conforming changes to Chapters 92, 201 and 207 of the Labor Code, and to Chapters 151 and 171 of the Tax Code. The bill repeals Labor Code Section 91.001(2), which defines an assigned employee, and Section 91.043, which prohibits the sponsorship of a plan of self-insurance for health benefits except as permitted by the Employee Retirement Income Security Act of 1974, as conforming changes. In addition, the bill repeals Section 171.0001(2) of the Tax Code.

The bill requires the Texas Commission of Licensing and Regulation to adopt rules necessary to administer the bill by January 1, 2014.

**Impact:** All departments handling professional employer services on behalf of UT System or its institutions, Risk Management and the Office of Employee Benefits should be aware of the changes made by SB 1286.

**Effective:** September 1, 2013

Tamra J. English

### **Compensation and Leave**

**[HB 480](#)** by Alvarado and Cortez

Relating to the use of sick leave by state employees who are attending educational activities of their children.

Currently, state law allows state employees to use up to eight hours of sick leave each fiscal year to attend a parent-teacher conference. HB 480 expands this provision to allow parents to attend other school sponsored activities such as tutoring, field trips, classroom programs, academic competitions, et cetera. Employees are required to give reasonable advance notice of their intention to use their sick leave to attend an educational activity.

**Impact:** The Office of Employee Benefits and all supervisory employees should be aware of the changes to Government Code Section 661.206 made by HB 480.

**Effective:** June 14, 2013

Tamra J. English

## Health Benefits

[HB 1869](#) by Price, et al. and Duncan

Relating to contractual subrogation and other recovery rights of certain insurers and benefit plan issuers.

HB 1869 places a limit on the amount certain health insurance plans can claim as a lien against a third party settlement that an injured person receives from a tort-feasor (the person or entity responsible for the injury) to cover the cost of the health care services that the health plan provided to the injured person. The bill applies to certain types of health insurance, including the UT System employee health plan (UT SELECT) and other state employee government plans, as well as fully funded employer health plans issued in Texas. It will not affect self-insured ERISA plans, Medicare plans, Medicaid plans, CHIPS, and workers compensation plans.

Under the law, if the injured person was represented by an attorney in the action that led to the settlement with the tort-feasor, then the most the health plan can take is 1/3 of the injured person's total settlement. If the injured person was not represented by an attorney, then the most the health insurance plan can take is 50% of the settlement.

**Impact:** This bill will limit how much the UT System's health plan can recover from participants in the UT SELECT plan for medical expenses the plan paid on behalf of the participant. It may also affect the ability of UT System hospitals to recover on liens that are placed on behalf of the hospitals on certain patients for unpaid medical bills

**Effective:** January 1, 2014

Barbara Holthaus

[HB 2020](#) by Crownover, et al. and Deuell

Relating to the adoption of wellness policies and programs by state agencies.

HB 2020 amends Chapter 664 of the Government Code to permit state agencies to develop a wellness program that would increase productivity and reduce health insurance costs. The bill would permit a state agency to offer financial incentives for participation, offer onsite clinic or pharmacy services in accordance with the Occupations Code, and adopt additional wellness policies determined by the agency. In awarding a contract for onsite clinic services, agencies would be permitted to consider whether applicable businesses are based in Texas.

**Impact:** UT System's Office of Employee Benefits (OEB) should be aware of this bill. If UT System chooses to create a wellness plan as contemplated by HB 2020, OEB will need to develop and implement both the incentives to be offered for participation in wellness programs as well as the programs that qualify for the incentives. Through a combination of actions, individuals participating in approved programs may ultimately pay less for health insurance costs than other persons.

**Effective:** June 14, 2013

Tamra J. English

[HB 2929](#) by Sheets and Deuell

Relating to health benefit plan coverage for brain injury.

This bill prohibits health insurance plans, including the UT System employer health plan, UT SELECT, from placing limits on the number of days of treatment the plan will cover for post-acute treatment of acquired traumatic brain injuries. It requires the plan to provide coverage beyond the terms of coverage provided by the plan, including the number of days available for post-acute care, if the plan member's physician determines that additional care is medically necessary.

It also prohibits a health plan from refusing to contract with, or approve admission to, a facility that holds accreditation from the Commission on Accreditation of Rehabilitation Facilities (CARF). It also authorizes the commissioner of insurance to adopt rules requiring insurers to contract only with licensed assisted living facilities that are accredited by CARF or a similar entity for the provision of post-acute care treatment (other than custodial care) that is covered by a health plan offered by the insurer.

**Impact:** UT SELECT will be required to increase coverage as required by the bill. Depending on future claims experience this could represent a substantial cost to the plan. If UT institutions provide this type of care, it may make it possible them to recoup expenses related to such treatment from patients that have health insurance.

**Effective:** September 1, 2013

Barbara Holthaus

[SB 822](#) by Schwertner and Eiland

Relating to the regulation of certain health care provider network contract arrangements; providing an administrative penalty; authorizing a fee.

SB 822 provides for the regulation of health care provider network contract arrangements under the Insurance Code by adding a new Chapter 1458 Provider Network Contracts to Subtitle F (Physicians and Health Care Providers) as follows:

- Registration with the Department of Insurance for currently unlicensed third-party contracting entities is required not later than 30 days after beginning to operate as a contracting entity. Disclosures must include organizational structure, organizational charts and affiliate relationships. Applications for exemption are required by contracting entities holding a certificate of authority to engage in the business of insurance or that operate a HMO. Applications for exemption must be accompanied by a list of the contracting entities' affiliates and updated annually. Affiliates of licensed insurers and HMOs are generally exempt from registration.

- Criteria for network and discount access, contract termination, the rights and responsibilities of contracting entities and disclosure of any third-party access to the providers' discounts are established.
- Contracting entities are prohibited from selling, leasing or transferring information regarding the payment or reimbursement terms of the provider network contract without the provider's express authority.
- The provider network contract must require that on the request of the provider, the contracting entity will provide the information necessary to determine whether a particular person has been authorized to access the provider's health care services and contractual discounts.
- To be enforceable against a provider, a provider network contract must specify separate fee schedules for each line of insurance business such as preferred and exclusive provider benefit plans, HMO plans, Medicare Advantage, Medicaid managed care and CHIP.
- Providers are broadly defined as including a physician, professional association of physicians, a legal entity authorized to practice medicine, a non-profit health corporation certified under Chapter 162 of the Occupations Code by the Texas Medical Board, a physician-hospital organization that acts as an administrator for a provider to facilitate participation in health care contracts or a hospital licensed under Chapter 241 of the Health and Safety Code. Physician-hospital organizations that lease or rent their network to a third party are not included in the definition of provider.
- A contracting entity that violates this chapter is subject to administrative sanction or penalty under the Insurance Code.
- These changes in law apply only to provider network contracts entered into or renewed on or after September 1, 2013.

**Impact:** To the extent that UT System health institutions and providers, other than hospitals, operate or participate in health care provider network contract arrangements, they are subject to these new provisions. UT System hospitals are not licensed under Chapter 241 and are, therefore, not included.

**Effective:** September 1, 2013

Allene Evans

[SB 1216](#) by Eltife and Davis

Relating to the creation of a standard request form for prior authorization of health care services.

SB 1216 requires the commissioner of the Texas Insurance Commission (TIC) to prescribe a standard single form to be used by health insurance and benefit plans to

request prior authorization of health care services. The TIC is required to develop, prescribe, and make electronically available a single form for a request for prior authorization of health care services no more than 2 pages in length. The form is required to allow electronic submission from the submitting provider to the health benefit plan.

SB 1216 further requires the TIC to appoint and consult a committee to advise the commissioner upon the practical, technical, and operational aspects of developing the single form. The committee will be composed of an equal number of physicians, other health care providers, hospitals, representatives of health benefit plans, and HHSC representatives. SB 1216 requires that the commissioner consult with the advisory committee as well as take into consideration any widely used national standards in the development of the form. Biennial review of the form is required.

Upon adoption, the use of the single form for prior authorization by all health benefit plans is required.

SB 644 applies to health benefit plans including an insurance company, group hospital service corporations, fraternal benefit societies, stipulated premium companies, reciprocal exchanges, HMO's, multiple employer welfare arrangements, non-profit health corporations, coverage for school districts, government risk pools, basic coverage plans, primary care coverage plans, worker's compensation coverage, CHIP, Medicaid, and Medicare. The bill does not apply to benefit plans covering only a specific disease, accidental death and dismemberment insurance, wage replacement insurance, credit insurance, dental insurance, hospitalization only insurance, indemnity plans, Medicare supplemental insurance, motor vehicle insurance, and long term care insurance.

The TIC is required to prescribe a standard form by January 1, 2015, and use of the form is required beginning September 1, 2015.

**Impact:** UT System institutions and employees providing health care services should be aware of the requirement to use and submit the standard form prescribed by the TIC to request prior authorization of health care services beginning September 1, 2015. UT System institutions and employees providing health care services should also be aware of the ability to submit the required from electronically. To the extent UT System institutions participate in or operate health benefit plans, they should be aware of the requirement to use the prescribed form.

**Effective:** September 1, 2013

Tim Boughal

[SB 1484](#) by Watson, et al. and Gonzales, Larry, et al.

Relating to health benefit plan coverage for enrollees diagnosed with autism spectrum disorder.

This bill amends Chapter 1355 of the Texas Insurance Code, to remove the age limit currently associated with coverage requirements for health benefit plan participants

diagnosed with autism spectrum disorder, effectively shifting the current requirements related to autism spectrum disorder to be applicable to any health benefit plan enrollee regardless of age.

**Impact:** This bill will not impact the UT System employee health plan, which is not subject to Chapter 1355 of the Insurance Code. It may increase the health insurance coverage available to patients that seek treatment for autism related disorders from UT System institutions. This includes, but may not be limited to, the Callier Center for Speech and Hearing Disorders at UT Dallas, which relies on insurance billing for revenue.

**Effective:** September 1, 2013

Barbara Holthaus

[SB 1795](#) by Watson and Guillen

Relating to the regulation of navigators for health benefit exchanges.

SB 1795 adds Chapter 4154 to the Insurance Code to create a navigator program for federal health benefit exchanges as described in Section 1311 of the Patient Protection and Affordable Care Act and the final regulations issued by HHS. The purpose of the navigator program is to provide consumers with information about coverage available through a federal ACA health care insurance exchange, to provide information about premium tax credits and cost-sharing reductions, explain the interaction with Medicaid and CHIP and to facilitate enrollment in qualified health plans.

SB 1795 provides for a state registration system for navigators, requires the Insurance Commissioner to determine if federal regulations are sufficient, and sets the minimum standards for federal rules as well as for state rules to be adopted if the federal rules are found to be insufficient.

Navigators may not engage in deceptive or misleading advertising and may not suggest the professional superiority of the navigator. Navigators may not receive compensation from insurers except if licensed as an agent. This chapter does not apply to licensed agents, health insurance counselors or insurance companies.

**Impact:** To the extent access to health coverage is improved by navigator program, the effect on UT System health institutions and providers will be to increase billings and revenue.

**Effective:** September 1, 2013

Allene Evans

## Unemployment Compensation

[HB 2035](#) by Vo and Eltife

Relating to the shared work unemployment compensation program.

HB 2035 makes several updates to the shared work unemployment compensation program to comply with updated federal law.

The bill amends Labor Code Section 204.022 by adding Subsection (f), prohibiting shared work benefits paid under Chapter 215 from being charged to the account of an employer if the benefits are reimbursed by the federal government under the federal Layoff Prevention Act of 2012.

The bill also amends Labor Code Section 215.001 by redefining “fringe benefit” and defining “training” under the statute.

It amends Labor Code Section 215.022 by adding requirements for the approval of a shared work plan including a description of how employees will be notified in advance of the plan and an estimate of the number of employees who would be laid off if the employer did not participate in the plan. It eliminates the requirement for the employer to describe the manner in which the participating employer treats the fringe benefits of each affected employee, and it allows eligible employees to participate in training.

The bill further amends Section 215.022 by requiring employers to certify that the implementation of the shared work plan and the resulting reduction in work hours is in lieu of layoffs, rather than temporary layoffs, that fringe benefits will continue for affected employees if they continue for unaffected employees, and that employers’ participation in the plan is consistent with employers’ obligations under state and federal law. It also adds the requirement that employers agree to furnish any information the United States secretary of labor determines is appropriate, and removes the prohibition from shared work plans being implemented to subsidize an employer who has traditionally used part-time employees.

The change in law applies only to a shared work plan submitted by an employer to the Texas Workforce Commission on or after September 1, 2013.

**Impact:** UT System institutions planning to enroll in shared work unemployment compensation programs need to be aware of the changes made to the requirements and rules of the program. Shared work plans submitted before the effective date of this bill will not be affected by the bill.

**Effective:** September 1, 2013

Omar Syed

[SB 21](#) by Williams and Creighton, et al.

Relating to drug screening or testing as a condition for the receipt of unemployment compensation benefits by certain individuals.

First, this bill requires the Texas Workforce Commission to implement a drug screening and testing program for persons who apply for unemployment benefits, and requires applicants to take required drug screenings and tests.

Second, the bill deems persons ineligible for benefits if they fail a drug test, but restores their eligibility if they pass a subsequent test four or more weeks later.

Third, the bill notes that certain unemployed persons can suitably work only in jobs that regularly conduct pre-employment drug testing, and makes those persons ineligible for benefits unless they comply with the TWC's drug screening and testing programs.

Finally, the bill allows an applicant to receive unemployment benefits even after failing a drug test, as long as the person is already participating in a drug abuse treatment program, enrolls in such a program within seven days after being notified of the failed drug test, or failed the test because of taking a substance prescribed by a physician.

**Impact:** This bill could make fewer former UT institution employees eligible for unemployment benefits. If that occurs, the bill may very modestly decrease the unemployment benefits premiums paid by UT institutions to the UT System Unemployment Compensation Insurance Fund.

**Effective:** September 1, 2013

Omar A. Syed

[SB 920](#) by Eltife and Reynolds

Relating to the requirement that an unemployed individual be actively seeking work to be eligible for unemployment compensation benefits.

SB 920 excludes a person from receiving unemployment benefits if he or she is not actively seeking work.

**Impact:** This bill could marginally decrease the premiums paid by each UT institution to the UT System unemployment benefits trust fund. Notably, the statute does not explain what it means to be "actively seeking" work, as opposed to simply being "available" for work. If and when the TWC issues clarifying regulations or interpretations, the effects on UT institutions will become more measurable.

**Effective:** May 18, 2013

Omar A. Syed

[SB 1537](#) by Deuell and Cortez

Relating to certain required notices under the Texas Unemployment Compensation Act, including employer liability arising from failure to provide the notice.

Under existing law, certain employers, known as “reimbursing” employers, must reimburse the Texas Workforce Commission for unemployment benefits the TWC pays to the employer’s former employees.

This bill will require employers who receive an unemployment benefits claim to issue an initial response that includes timely sufficiently detailed written information to allow the TWC to decide if the person should receive benefits.

If an employer fails, without good cause, to provide the information and then reimburses the TWC too much for the claim, this bill will prevent the TWC from refunding the overage to the employer.

Finally, if the employer fails, without good cause, to provide this information and then reimburses the TWC too little for the claim, this bill will treat the reimbursement as if it had never been made to the TWC.

**Impact:** This bill will put a greater onus on UT System’s Office of Risk Management (ORM), since it administers the UT System Unemployment Compensation Insurance Fund on behalf of the UT institutions. As a result, ORM will need to review its initial responses to unemployment claims, and edit them to ensure they contain enough factual details to enable the TWC to make a determination on the claim.

**Effective:** October 1, 2013

Omar A. Syed

## **Retirement**

[HB 13](#) by Callegari, et al. and Duncan

Relating to the State Pension Review Board and public retirement systems; authorizing a fee.

HB 13 increases the responsibilities of public retirement systems (including TRS):

- Each system shall post on its website copies of all reports required to be filed with the State Pension Review Board and contact information of the administrator of the system. Such report and information must remain posted until a more recent report is posted. Government Code Section 802.107(c), (d) and (e); and
- New Government Code Section 802.108 requires a system to annually file an investment returns and assumptions report with the State Pension Review Board

before the 211<sup>th</sup> day after the close of its fiscal year. The report must include the gross and net investment returns for each of the most recent 10 fiscal years, the rolling gross and net investment returns for the most recent 1, 3, and 10 year periods, the rolling gross and net investment returns for the lesser of 30 years or since the system's inception, the assumed rate of return used in the most recent actuarial valuation and the assumed rate of return used in each of the most recent 10 actuarial valuations.

HB 13 increases the responsibilities of the State Pension Review Board:

- The State Pension Review Board is required to post on its website copies of all reports required to be filed with the Board by public retirement systems (including TRS). If any public retirement system report is 60 days late, the Board shall list the delinquent systems on its website, shall notify the governor and the LBB of the delinquency and shall notify the governing body of the delinquent system. Government Code Section 801.209
- New Government Code Section 801.210 requires the State pension Review Board to develop a model ethical standards and conflict of interest policy for voluntary use by public retirement systems.
- A new Government Code Section 801.210 requires the Board to develop and administer an educational training program for trustees and administrators of public retirement systems. A system may develop its own training program if it determines that it equals or exceeds the program developed by the Board.
- The Board shall conduct a study of the financial health of the public retirement systems including each system's ability to meet its long term obligations. Each system shall cooperate. The report is to be submitted to the legislature no later than September 1, 2014.

**Impact:** HB 13 impacts TRS and the relationship of TRS to the State Pension Review Board in many ways particularly with the requirement that the TRS file a new annual investment returns and assumptions report. There is no direct impact on UT System, but most employees of UT System and its component institutions are members of TRS.

**Effective:** May 24, 2013

Donald O. Jansen

[HB 3357](#) by Callegari, et al. and Duncan

Relating to the administration of, membership in, and benefits payable by the Teacher Retirement System of Texas.

HB 3357 covers many subjects with TRS but some are not applicable to UT System employees. The following are the more important TRS changes which could affect UT System employees:

- Government Code Section 824.1012(a) and (b) is amended to allow a retiree who has received at least one annuity payment to change certain optional retirement annuity or optional disability retirement annuity to a standard service or disability annuity and revoke the beneficiary designation under certain circumstances. Under the new law, the change can occur only with notarized consent of the spouse or former spouse beneficiary or by a court order in a divorce proceeding involving the retiree and the beneficiary.
- In a related change, Government Code Section 824.1013 is amended to allow a change of the beneficiary designation of a spouse by a retiree under an optional retirement annuity by the order of a court with jurisdiction over the marriage of the retiree and the spouse or by written notarized consent of the spouse or former spouse if there is a divorce.
- Government Code Section 825.115 is amended to allow closed meetings of the TRS Board (1) with the Board's auditors to discuss governance, risk management or internal control weaknesses, known or suspected compliance violations or fraud, status of regulatory reviews or investigations, or identification of potential fraud risk areas and audits for the annual internal audit plan OR (2) with one or more employees, consultants, or legal counsel of TRS or a third party regarding a procurement to be awarded by the Board (in the latter case, the Board must vote in opening meeting that such closed meeting is necessary to avoid detrimental effect on the negotiations but final action on the procurement must be in open meeting).
- Government Code Section 825.294 is amended to protect the medical board appointed by TRS from subpoena regarding findings it makes to assist the executive director and the TRS Board and members of the medical board may not be held liable for any opinions, conclusions or recommendations they make.
- Government Code Section 825.212 is amended to require the TRS to adopt code(s) of ethics for TRS trustees, employees and contractors which provide advice or opinion or significant services to the Board. The TRS Board may place into an ethics code (1) enhanced disclosure requirements for employees and Board members, (2) impose disclosure requirements on contractors for expenditures on behalf of TRS or its employees in excess of a minimum amount, or (3) address topics related to ethical conduct, prohibited conduct, conflicts of interest, and sanctions. The common law of conflicts of interest as applied to

trustees, employees and contracts of TRS is modified to the extent violations of the common law of conflicts of interests do not void TRS contracts. The TRS may adopt procedures for disclosing and curing violations.

- Government Code Section 825.507 is amended to provide (1) information about participant records as well as the records themselves are confidential, (2) confidentiality is extended to records and information in the custody of the Comptroller, and (3) the TRS and an administering firm, carrier, attorney, consultant, or governmental agency including the Comptroller acting in cooperation with or on behalf of TRS, are not required to accept or comply with a request for a record or information. Also this section allows the employer to provide TRS the work email address of each participant but does not authorize TRS to compile or disclose email addresses of participants unless the executive director determines such compilation or disclosure is necessary to administer the TRS.

**Impact:** The TRS retirement changes do not directly affect UT System. However, it would affect UT System employees since most of them are participants in TRS. Except for the amendments to Government Code Section 824.1012 and 824.1013, which are effective September 1, 2013, the rest of the Act is effective on June 14, 2013.

**Effective:** This act takes effect immediately (June 14, 2013), except sections 2, 3, and 4 take effect September 1, 2013.

Donald O. Jansen

[SB 200](#) by Patrick, et al. and Anchia

Relating to the continuation and functions of the State Pension Review Board.

The new law would amend various sections of the Government Code concerning the State Pension Review Board (“Board”) and other matters. Below is a review of those sections of the new law which affects the Teachers Retirement System (“TRS”):

- With regard to a person to be appointed or hired after the effective date of the Act, Section 801.1021 is amended to make a person or his/her spouse who is an officer, employee or paid consultant of a Texas trade association in the field of pensions ineligible to be appointed as a member of the Board or to be an employee of the Board in a bona fide executive, administrative or professional capacity.
- Section 801.107 is amended to extend the sunset date of the Board from September 1, 2013 to September 1, 2025.
- Section 801.106 is amended and Section 801.104 is repealed to reduce the size of the Board from 9 to 7 members by eliminating appointees by the lieutenant governor and the speaker of the house. The terms of the current appointees by the

lieutenant governor and the speaker of the house expire on the effective date of the Act.

- A new Section 801.2012 is added which requires the Board to develop and implement a policy encouraging the use of negotiated rulemaking procedures for adoption of Board rules and appropriate alternative dispute resolution procedures to resolve internal and external disputes under the Board's jurisdiction (which conform to any guidelines issued by the State Office of Administrative hearings for use in ADR by state agencies).
- Current Section 801.113(e) authorizes the Board to conduct training sessions and other educational activities for trustees and administrators of public retirement systems. A new Section 801.208 is added to specify three methods of conducting such training and educational activities: (1) conduct live training seminars on an internet website, (2) maintain archives of previous seminars reasonably accessible on the internet website and (3) use technologies and innovations to educate the greatest practicable number of trustees and administrators.
- Current Section 802.106(h) requires a public retirement system to give a summary to the Board within 271 days after adoption of any significant changes in the statutes and ordinances governing the retirement system that affects contributions, benefits or eligibility. The new law changes the 271 day reporting period to 31 days for any changes that occur after the effective date.
- A new Chapter 807 prohibits investment of pension funds in companies doing business with Iran. The Comptroller will prepare a list of such companies. Certain state government entities including the TRS are prohibited from investing. If the state government entity is already invested, there are procedures for divesting unless divestment will likely result in a loss in value or a benchmark deviation. The new law would expire at the earlier of the U.S. revoking sanctions against Iran or the date the U.S. Congress or the President declares that such mandatory divestment interferes with U.S. foreign policy. By December 31 of each year, the state government agency shall file a report with the Texas AG and the presiding officers of the Texas House and Senate identifying securities divested, prohibited investments and changes in investments in managed funds or private equity funds.

Most of the bill is effective September 1, 2013. However, Government Code Chapter 807 dealing with investments in companies doing business with Iran is effective January 1, 2014.

**Impact:** There is no direct impact on UT System. However, most of the UT System employees are members of TRS, which is impacted by the new law.

**Effective:** January 1, 2014

Donald O. Jansen

[SB 1458](#) by Duncan and Callegari

Relating to contributions to, benefits from, and the administration of systems and programs administered by the Teacher Retirement System of Texas.

SB 1458 makes significant changes in the Government Code to the TRS retirement program.

- State Contributions to TRS. Section 825.404(a) still requires the state to contribute to TRS an amount equal to 6% to 10% of the aggregate annual compensation of all members for a fiscal year. Presumably because of the increase in member contributions discussed below, the requirement that the amount of state contributions not be less than the amount of member contributions during the same fiscal year has been repealed.
- Member Contributions to TRS. Starting September 1, 2014, the current member contribution of 6.4% of annual compensation under Section 825.402 will increase each fiscal year through FY 2017 – 6.7% FY 2015, 7.2% FY 2016 and 7.7% for FY 2017. Beginning September 1, 2017 the member’s contribution rate shall be 7.7% reduced by 1/10<sup>th</sup> of 1% for each 1/10<sup>th</sup> of 1% that the state contribution rate is less than the state contribution rate for FY 2015.
- Eligibility for Full Retirement. For members who do not have 5 years of service on or before August 31, 2014 or who become members on or after September 1, 2014, under new Section 824.202(a-2), such members are eligible to retire (a) at 65 years of age with at least 5 years of service OR (b) at least 62 years of age with at least 5 years of service AND the sum of the member’s age and years of service equals 80.
- Eligibility for Early Retirement. For members who do not have 5 years of service on or before August 31, 2014 or who become members on or after September 1, 2014, under new Section 824.202(b-2), such members are eligible to retire at least 55 years of age with at least 5 years of service but with a reduction in the standard service annuity for each year under 65 years of age at retirement ranging from 47% to 93% depending upon the exact age.
- Special Early Retirement Under Rule of 80 or 30 Years of Service. For members who have less than 5 years of service on or before August 31, 2014 or who become members on or after September 1, 2014, under new Section 824.202(d-2), such members are eligible to retire if the member’s age and years of service equals 80 OR the member has at least 30 years of service with a reduction in either case of the annuity of 5% for each year of age under 62 at the date of retirement.
- One-Time Cost of Living Adjustment. Under new Section 824.702 certain retirees and beneficiaries entitled to a monthly death or retirement benefit annuity will receive a monthly cost of living adjustment beginning with their September, 2013

payment equal to the lesser of 3% of the monthly benefit or \$100. To be eligible, the annuitant must have been entitled to the annuity on or before August 31, 2004 and be receiving the annuity in September, 2013.

- Account interest. Sections 824.807 and 825.307 are amended to reduce interest from 5% to 2% for interest credited to a member's deferred option account and the member's TRS savings account, respectively.

**Impact:** The changes to the TRS retirement program affect UT System employees who are members. There is included in the bill changes to the Texas Public School Employees Group Benefits Program and the Texas School Employees Uniform Group Health Coverage which are not summarized above since UT System employees are not participants in those insurance programs. The general effective date is September 1, 2014. However, the effective date is September 1, 2013 for the one-time cost of living increase under Section 824.702 and for the member TRS contributions under Section 825.402.

**Effective:** This Act takes effect September 1, 2014, except Sections 2, 5, and 11 take effect September 1, 2013.

Donald O. Jansen

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## Ethics and Compliance

### [HB 12](#) by Flynn, et al. and Zaffirini

Relating to gifts and other consideration made to state agencies for state employee salary supplement or other purposes and to publication by state agencies of staff compensation and related information.

HB 12, applicable to state agencies generally, expressly applies to institutions of higher education, adding Sections 659.0201 and 659.026, Government Code.

If an agency accepts a gift that the donor designates to be used as a salary supplement for an employee, the agency must post the amount of the gift on the agency's website.

The governing board must adopt a conflict of interest rule or policy regarding acceptance of gifts to be used as a salary supplement and post that rule or policy on the website.

The agency must post on the agency's website a list of information regard staff and compensation, including FTEs, appropriations, methodology for executive compensation, eligibility of executive staff for salary supplementation, compensation market average for executive staff, average compensation of non-executive agency employees, and percentage increases of executive compensation for preceding five fiscal years.

**Impact:** As expressly covered agencies, each institution must compile and post the required information on its website. However, under existing policies and practices, UT System and System institutions do not typically accept gifts designated for use as a salary supplement, and to the extent an institution accepts such a gift, it is unlikely that the gift would be for a named person. As a result, it is unlikely that any UT System institution will have gifts triggering a reporting requirement under the law. Existing conflict of interest policies must be reviewed to ensure that the policies include the elements required by HB 12.

**Effective:** June 14, 2013

Steve Collins

### [HB 16](#) by Flynn, et al. and Ellis

Relating to a requirement that a state agency post its internal auditor's audit plan and audit report and other audit information on the agency's Internet website.

This bill creates a new section 2102.015 of the Texas Government Code. It requires that a state agency post on their website, the agency's internal audit plan and the agency's annual audit report.

The state agency is not required to post information that is confidential or excepted from public disclosure under the Public Information Act.

The state auditor shall determine the time and manner in which information shall be posted and updated. A detailed summary must include the weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit plan or annual report.

The posting must also include a summary of the action taken by the agency to address the concerns raised by the audit plan or annual report.

**Impact:** This bill will generally require that UT System's and each component institution's internal audit plan and annual audit report be published on their respective internet websites. Much of the administrative detail of how such online posting of data will take place is left to the State Auditor.

**Effective:** June 14, 2013

Jason D. King

[HB 1358](#) by Hunter, et al. and Van de Putte

Relating to procedures for certain audits of pharmacists and pharmacies.

HB 1358 prescribes reasonable audit limitations on health plans and their agents with respect to pharmacy claims conducted during an audit of a pharmacist or pharmacy.

Some of the highlights of the bill are as follows:

- written notice 14 days in advance of the audit;
- accommodation of pharmacists/pharmacy schedule;
- 20 day minimum for pharmacists to collect requested desk audit materials;
- network contracts must detail audit procedures for both on-site and desk audits;
- reasonable audit methodologies;
- limitations on the basis for allegations of fraudulent activities;
- allegations that a pharmacist/pharmacy committed fraud or intentional misrepresentation must be stated in the final audit report;
- auditors cannot directly or indirectly receive compensation based on a percentage of the audit amount recovered; and
- expansion of audit appeal rights by pharmacies/pharmacists.

The bill exempts from its provisions health plans and their agents administering pharmacy benefits under the state Medicaid program, the federal Medicare program, the

state child health benefit plan for children, the TRICARE military health system, certain workers' compensation insurance policies, and a self-funded health benefit plan.

**Impact:** This legislation will favorably impact pharmacies and pharmacists by requiring that pharmacy audits be conducted with a reasonable and constructive methodology and include expanded appeal rights.

**Effective:** September 1, 2013

Chuck Johnstone

[SB 149](#) by Nelson and Keffer, et al.

Relating to the Cancer Prevention and Research Institute of Texas.

SB 149 makes numerous substantial amendments to Health and Safety Code Chapter 102 governing the Cancer Prevention and Research Institute of Texas (CPRIT) regarding ethics and conflicts of interest, establishing a compliance program, and establishing the Cancer Prevention and Research Interest and Sinking Fund.

**Compliance Officer:** CPRIT must employ a Chief Compliance Officer and establish a compliance program to ensure that CPRIT, its employees and committee members comply with the rules regarding ethics, standards of conduct and financial reporting.

**Oversight Committee:** This bill removes the Comptroller and Attorney General as members of the Oversight Committee, which will now consist of 9 members. The Oversight Committee shall elect a presiding and assistant presiding officer every two years, who may not serve in that position for two consecutive terms. Oversight Committee members must disclose each political contribution to a candidate for a state or federal office over \$1,000 made in the five preceding years and each year of that person's term. A report of the Oversight Committee members' political contributions must be posted on the CPRIT website.

**Program Integration Committee:** CPRIT shall establish a Program Integration Committee composed of 1) CPRIT's Chief Executive Officer, 2) CPRIT's Chief Scientific Officer, 3) CPRIT's Chief Product Development Officer, 4) the Commissioner of State Health Services, and 5) CPRIT's Chief Prevention Officer. This committee will review grant applications recommended by the Research and Prevention Programs Committee, and those approved by majority vote will be sent to the Oversight Committee for final grant approval.

**Conflicts of Interest:** CPRIT employees and committee members shall recuse themselves if they or their relatives (to the second degree of consanguinity or affinity) have a professional or financial interest in an entity receiving or applying to receive money from CPRIT. Oversight Committee members must file a personal financial statement with the Chief Compliance Officer. All committee members and employees must disclose any conflicts of interest in writing and recuse themselves from participating in the review, discussion and vote on the application. The Oversight Committee shall

adopt rules that permit waivers to the conflict of interest requirements to be granted under exceptional circumstances, which may be granted upon majority vote of the Oversight Committee. Procedures for investigation of unreported conflicts of interest are established.

**Code of Conduct:** The Oversight Committee must adopt of a code of conduct applicable to each committee member and employee. The code of conduct must include provisions prohibiting activities that could influence the member or employee in the discharge of official duties, including: acceptance or solicitation of gifts, employment or compensation, making personal investments, receiving benefits for exercising official powers, leasing property, submitting a grant application, and serving on a board of directors.

**Grant Funding:** Prior to receiving the grant, grant recipients must certify that they have received matching funds dedicated to the research that is the subject of the grant award. CPRIT will adopt a policy on advance payments to grant recipients. The following formula may be used by institutions of higher education to count towards matching funds: the difference between the indirect cost rate authorized by the federal government for research grants awarded and the CPRIT indirect cost rate. CPRIT will establish reporting requirements for grant recipients and a system to track reports and monitor status. CPRIT can suspend or terminate the grant if the recipient fails to comply with the reporting requirements or matching funds provisions.

**Grant Records Maintenance:** CPRIT must maintain complete records of each grant application, each grant recipient's financial reports, including matching funds, progress reports, identification of each principal investigator, and CPRIT's review of the grant recipients' financial reports and progress reports. CPRIT shall perform periodic audits of any electronic grant management system used to maintain such records.

**Public Records and Open Meetings:** CPRIT's records are exempt from disclosure under the Texas Public Information Act; however, the records of a nonprofit organization providing support to CPRIT are subject to the Act. Information that is collected or produced in a compliance program investigation are exempt from disclosure if releasing the information would interfere with an ongoing investigation. CPRIT is required to post on its website records that pertain to any gifts, grants, or other consideration provided to CPRIT, its employees or committee members, including the donor's name, amount and date. The Oversight Committee may conduct closed meetings to discuss compliance investigation issues related to fraud, waste, or abuse of state resources.

**Annual Report:** The CPRIT annual report must now include a statement of CPRIT's compliance program activities and a list of any conflicts of interest, recusals, and conflict of interest waivers granted. The CPRIT annual report must also be posted on the internet.

**Cancer Prevention and Research Interest and Sinking Fund:** New Subchapter G establishes a Cancer Prevention and Research Interest and Sinking Fund, which will be a dedicated account in the general revenue fund. This new fund will consist of income from patent, royalty, license fees, other income received under contract, and interest

earned on fund investments. This new fund may be used only to pay for debt services on issued bonds.

**Impact:** SB 149 will permit UT System institutions to claim as matching funds, the difference between indirect costs authorized in research grants from the federal government and the indirect costs permitted under the CPRIT grant. UT System institutions will also have additional reporting obligations, including certification of matching funds prior to grant, and progress reporting. Failure to comply with reporting obligations may result in termination of the grant and repayment of funds.

**Effective:** June 14, 2013

BethLynn Maxwell

**SB 251** by West and Carter

Relating to an unsworn declaration made by an employee of a state agency or political subdivision in the performance of the employee's job duties.

This bill amends Section 132.001 of the Texas Civil Practice and Remedies Code, which specifies what a jurat must state within an unsworn declaration.

Previously, a jurat required the following:

- the individual's name;
- the individual's address; and
- a declaration under penalty of perjury that the foregoing statements are true and correct.

Since passage of this bill, there is now a special jurat for employees of state agencies or political subdivisions who attest to matters in the performance of the employee's job duties.

The new jurat requires the following:

- The individual's name;
- A statement that the individual is an employee of a specifically named governmental agency;
- A declaration that the employee is executing the declaration as a part of their assigned duties; and
- A declaration under penalty of perjury that the foregoing statements are true and correct.

**Impact:** UT System and its component institutions should review any current forms and processes to ensure that the proper jurat is utilized for state employees.

**Effective:** September 1, 2013

Jason D. King

[SB 895](#) by Davis, et al and Alvarado, et al

Relating to access to records of a nonprofit organization supporting the Cancer Prevention and Research Institute of Texas under the public information law.

SB 895 amends Health and Safety Code (Section 102.262) to provide that records of a nonprofit organization established to provide support to the Cancer Prevention and Research Institute of Texas (CPRIT) are public information available through the Texas Public Information Act.

**Impact:** This bill directly impacts the CPRIT Foundation's ability to maintain confidentiality of its records by making its records subject to the Public Information Act. There is no direct impact on UT institutions.

**Effective:** June 14, 2013

BethLynn Maxwell

### **Board of Regents**

[HB 31](#) by Branch, et al. and Zaffirini

Relating to certain requirements applicable to meetings of the governing board of a general academic teaching institution or a state university system.

This bill adds a provision to Chapter 551 of the Government Code relating to regularly scheduled meetings of the governing board of a general academic teaching institution or university system which require notice. For such meetings, the governing board must post on its website the written agenda and any related supplemental materials provided to the board members for their use during the meeting. Written materials that the general counsel or other attorney for the institution certifies are confidential or protected from disclosure under Chapter 552 of the Government Code would not have to be posted. In addition to posting the agenda and other materials on the website, the meeting, except for those portions that are closed to the public, must be broadcast on the internet and recorded such that the recording is publicly available on an online archive located on the system or university website. Compliance is not required if it is not possible due to an act of God, force majeure, or other cause not reasonably within the governing board's control. This provision applies only to meetings for which notice is given per Chapter 551 of the Government Code on or after January 14, 2014.

**Impact:** This bill impacts UT System as it not only requires that meetings of the Board of Regents which require public notice be available by the internet but it also requires that the agenda and other materials be posted on the UT System site; though counsel will have the discretion to determine which materials will not need to be posted due to their confidential nature.

**Effective:** June 14, 2013

Neera Chatterjee

[HB 1753](#) by Patrick, et al. and Hancock

Relating to authorizing the board of regents of The University of Texas System to acquire certain property in the City of Arlington.

This bill provides legislative authorization for the acquisition of multiple parcels immediately east of the U. T. Arlington campus and bounded by South Center Street, East Mitchell Street, South Mesquite Street, and East 3rd Street in Arlington, Texas.

**Impact:** This bill eliminates any need for Coordinating Board approval of acquisition of real property within the identified acquisition zone. (Additionally, SB 215, 83rd Regular Legislative Session, which is effective September 1, 2013, eliminates the Coordinating Board's authority to approve or disapprove any real property acquisitions.)

**Effective:** June 14, 2013

Florence Mayne

[HB 2414](#) by Button, et al. and Deuell

Relating to open meetings of governmental bodies held by videoconference call and to written electronic communications between members of a governmental body.

The Open Meetings Act is amended such that the term "videoconference call" is defined as communication between two or more people in which at least one person participating in the call communicates with the other participants through duplex audio and video signals transmitted over a telephone or data network or the internet. A member or employee of a governmental body may participate remotely in a meeting of the governmental body through a videoconference call if the video and audio feed of the individual's participation is broadcast live at the meeting and otherwise complies with Section 551.127 of the Government Code. A member of a governmental body who participates in a meeting by a videoconference call is considered to be present at the meeting.

A meeting of a governmental body may only be held by videoconference call if the governmental body makes available to the public at least one suitable physical space located in or within a reasonable distance from the governmental body and the member of the governmental body that is presiding over the meeting is present in that space. The

space must be equipped with videoconference equipment which provides audio and video display and a camera and microphone so that a member of the public may provide testimony or otherwise participate in the meeting in the same manner as if the meeting was not conducted by a videoconference call. In addition, the space must have two-way audio and video communication with every member who is participating by videoconference call and each participant in the videoconference call must be clearly visible and audible to the other participants and the members of the public in attendance at the physical location. The notice of a meeting held by videoconference must specify the location of the required physical space.

In addition, this bill adds a provision to the Open Meetings Act where electronic communications between members of a governmental body about public business or public policy over which the governmental body has control is not considered a meeting or deliberation for purposes of the Open Meetings Act if the communication is in writing, the writing is posted on the internet in a manner that is viewable and searchable by the public and the communication is displayed in real time and displayed online for at least 30 days after it is posted.

A governmental body can have no more than one internet application for posting this information and the application must be owned or controlled by the governmental body, prominently displayed on the governmental body's primary website and no more than one click away from the governmental body's primary website. The internet application can only be used by members of the governmental body or staff authorized by a member of the governmental body. Authorized personnel that post a communication on the application must also post their name and title. Once a message is removed from the website after being posted for at least thirty days, it must be maintained by the governmental body for six years and is considered public information and must be disclosed under Chapter 552 of the Government Code. Finally, the governmental body may not take a vote or any action that is required to be taken at a meeting by posting a communication to the internet application. A post or communication on the internet site is not an action of the governmental body.

The changes as outlined in this bill apply only to meetings held on or after the effective date of this bill.

**Impact:** The use of videoconferencing by the UT System Board of Regents during meetings is made easier under this bill and can potentially help reduce the costs associated with meetings of the UT System Board of Regents. In addition, this bill eases certain restrictions in the Open Meetings Act relating to electronic communications by allowing electronic communications between members of the UT System Board of Regents if the requirements outlined in this bill are met.

**Effective:** June 14, 2013

Neera Chatterjee

[SB 471](#) by Ellis and Harper-Brown

Relating to technological efficiencies in the recording of certain open meetings.

SB 471 adds a definition for “recording” under the Open Meetings Act and is defined as a tangible medium upon which audio or audio and video is recorded, including a disc, tape, wire, film, electronic storage device or other medium now existing or later developed. The Open Records Act is revised such that all references to required or permitted “tape recording” throughout the Act are removed and revised to reflect the newly defined term, “recording.”

**Impact:** Under this bill, the UT System Board of Regents are no longer required to make antiquated tape recordings of their meetings and can instead make digital recordings that are more efficient and economical.

**Effective:** May 18, 2013

Neera Chatterjee

[SB 984](#) by Ellis and Perry

Relating to the meeting of a governmental body held by videoconference call.

The Open Meetings Act is amended such that a meeting of a governmental body can be held by videoconference regardless of whether a majority of the quorum of the governmental body is present at one location. In addition, public notice of where the member(s) participating by videoconference is/are located is no longer specifically required. Instead the bill requires public notice of where the member of the governmental body presiding over the meeting is located. The member presiding over the meeting must be at a location that is open to the public during the open portions of the meeting. If a problem occurs that disrupts the audio or video available to the public, the meeting must be recessed until the problem is resolved. If the problem cannot be fixed in six hours or less, it must be adjourned.

**Impact:** The use of videoconferencing by the UT System Board of Regents during meetings is made much easier under this bill and can potentially help reduce the costs associated with Board member travel to meetings.

**Effective:** September 1, 2013

Neera Chatterjee

**SB 1019** by Estes and Frank

Relating to the investment of funds by the governing boards of certain institutions of higher education.

SB 1019 allows an institution of higher education with less than \$25 million in endowments to pool the investment of its endowment funds with an institution that has at least \$25 million in endowments. If the institution does pool the investment of endowment funds, the funds may be invested under the “prudent person” standard, which is defined by law as the “prudent investor” standard applicable to management of the Permanent University Fund.

**Impact:** The bill authorizes the UT Board of Regents to agree to invest the endowment of a qualifying institution in pooled investments through UTIMCO.

**Effective:** September 1, 2013

Steve Collins

**SB 1297** by Watson and Branch

Relating to written electronic communications between members of a governmental body.

This bill adds a provision to the Open Meetings Act where electronic communications between members of a governmental body about public business or public policy over which the governmental body has control is not considered a meeting or deliberation for purposes of the Open Meetings Act if the communication is in writing, the writing is posted on the internet in a manner that is viewable and searchable by the public and the communication is displayed in real time and displayed online for at least 30 days after it is posted.

A governmental body can have no more than one internet application for posting this information and the application must be owned or controlled by the governmental body, prominently displayed on the governmental body’s primary website and no more than one click away from the governmental body’s primary website. The internet application can only be used by members of the governmental body or staff authorized by a member of the governmental body. Authorized personnel that post a communication on the application must also post their name and title. Once a message is removed from the website after being posted for at least thirty days, it must be maintained by the governmental body for six years and is considered public information and must be disclosed under Chapter 552 of the Government Code. Finally, the governmental body may not take a vote or any action that is required to be taken at a meeting by posting a communication to the internet application. A post or communication on the internet site is not an action of the governmental body.

**Impact:** This bill eases certain restrictions in the Open Meetings Act relating to electronic communications by allowing electronic communications between members of the UT System Board of Regents if the requirements outlined in the bill are met.

**Effective:** September 1, 2013

Neera Chatterjee

**SB 1604** by Zaffirini and Howard

Relating to asset management and acquisition by institutions of higher education.

This bill addresses matters affecting the UT System. Section 1 extends to M.D. Anderson a protection afforded to all the other UT institutions last session that provides that in any contract for the acquisition of goods and services to which an institution of higher education is a party, a provision required by applicable law to be included in the contract is considered to be a part of the executed contract without regard to: (1) whether the provision appears on the face of the contract; or (2) whether the contract includes any provision to the contrary.

Section 2 amends the Property Code to prevent cotenants from being able to place liens on properties where an institution of higher education is a co-owner. UT institutions are often co-beneficiaries of estates or gifts, and sometimes gifts or devises to UT institutions are subject to the rights of survivors or life tenants. This provision protects the UT interests from being compromised by the cotenant.

Section 3 addresses the composition of the UTIMCO board of directors. Currently, the Chancellor is an ex-officio member of the board. This would change that and let the board of regents appoint the Chancellor or another individual whom the regents determine to be qualified.

Section 4 eliminates an obsolete provision relating to the ownership and operation of The Jennie Sealy Hospital and R. Waverly Smith Pavilion, part of the Medical Branch complex in Galveston. Elimination of this section will remove ambiguity and allow UT to conclude a transaction to replace the subject hospital.

Sections 5 and 6 relate to the powers of the Texas A&M Board of Regents, and do not affect the UT System or its institutions.

Section 7 adds an area of interest in Brownsville, allowing the UT Board of Regents to acquire land within the defined three zones for campus and other university purposes. These zones are consistent with the areas being considered by UT System for the location of the new campus for the Brownsville operations of the newly-authorized university to succeed UT Pan Am and UT Brownsville.

**Impact:** These changes are beneficial to UT System and its institutions, and were supported by staff.

**Effective:** June 14, 2013

Mark Bentley

## University of South Texas

[SB 24](#) by Hinojosa, et al. and Oliveira, et al.

Relating to the creation of a new university in south Texas within The University of Texas System.

This bill establishes a general academic teaching institution in south Texas within the UT System that includes:

- in Cameron County, an academic campus with other academic operations;
- in Hidalgo County, an academic campus with other academic operations;
- in Starr County, an academic center;
- a medical school and other programs in south Texas as previously authorized by the 81st Legislature; and,
- the Lower Rio Grande Valley Academic Health Center (RACH) facilities and operations previously authorized.

The UT System Board of Regents (BOR) is authorized to organize, administer, locate and name the new institution, its colleges, schools, and other institutions. The BOR shall make rules and regulations as necessary to establish a university of the first class. The primary facilities and operations of the university must be equitably allocated among Cameron, Hidalgo, and Starr counties. The programs of the medical school component are to be conducted throughout the region with a substantial presence in Hidalgo and Cameron County while providing interdisciplinary education across health professions. The BOR may solicit and accept gifts and grants on behalf of the university.

The BOR may prescribe courses leading to degrees and may award degrees, including: bachelor's, master's and doctoral degrees and their equivalents as well as medical school degrees and other health science degrees. Such degree programs require approval of the Higher Education Coordinating Board. Courses may include any course or program previously authorized for UT Pan American or UT Brownsville. Joint faculty appointments are authorized.

The university is entitled to participate in the Permanent University Fund to the same extent as similar institutions of the UT System.

The Center for Border Economic and Enterprise Development and The Texas Academy of Mathematics and Science, existing programs at UT Pan American and UT Brownsville, are continued under the new university.

The University of Texas Health Science Center—South Texas

A medical school is part of the health science center. The administrative offices of the health science center are to be located in Hidalgo and Cameron counties with the offices overseeing undergraduate medical education located in Hidalgo County and the offices overseeing graduate medical education in Cameron County. Educational programs for first and second year medical students will be primarily in Hidalgo County while educational programs for third and fourth year medical students will be primarily in Cameron County. Educational programs are to take advantage of existing educational facilities and programs.

UT Pan American and UT Brownsville.

UT Pan American and UT Brownsville are abolished upon action by the BOR, the effective date of which cannot be earlier than the date upon which the new south Texas university begins operation. The BOR retains all powers and duties related to the abolished institutions. Employment of faculty and staff of the abolished universities is to be facilitated by the BOR while students of the abolished universities are entitled to admission to the new south Texas university. The partnership between UT Brownsville and Texas Southmost College shall continue until August 31, 2015 to the extent necessary to ensure accreditation.

**Impact:** The development, coordination, administration and management of a new university, particularly one including a medical school, are a significant undertaking that will impact the UT System and south Texas for many years. The BOR, System Administration staff and staff of the new south Texas university will be involved in every aspect of this new development.

**Effective:** June 14, 2013

Melodie Krane

**Privacy**

**HB 346** by Deshotel and Carona

Relating to the accessing and use of electronically readable personal identification information obtained from driver's licenses or personal identification certificates.

HB 346 allows a "business" to scan and store electronically readable information embedded in a driver's license. It also allows businesses to provide this information to check services or fraud prevention services companies as part of a transaction initiated by the license holder.

**Impact:** "Business" is not a defined term in the statute amended, but is likely broad enough to include the business operations of an institution of higher education. Institutions of higher education will therefore fall under this bill. Scanning and storing

the drivers' license information is intended as a measure to prevent fraud by allowing the business to verify an individual's identity as the point of sale or service.

**Effective:** June 14, 2013

Steve Collins

[HB 729](#) by Price and Deuell

Relating to access to criminal history record information by certain hospitals and other facilities.

HB 729 permits a public or nonprofit hospital or hospital district to conduct criminal background checks on students enrolled in educational programs who are placed at the hospital for educational purposes using the DPS non-public criminal records data base. It also permits such hospitals to refuse to permit such a student to be present at the hospital if the student refuses to provide information needed to conduct a background check, or if the background check reveals a conviction or adjudication that renders the student unqualified or unsuitable to be at the hospital for educational purposes.

Another section of this bill entitles facilities licensed to provide home and community care to conduct criminal background checks on applicants for employment, employees of businesses that contract with the facility, volunteers and students who are at the facility for educational purposes using the DPS non-public criminal records database.

**Impact:** This bill may assist UT System institutions to conduct background checks on students coming to their facilities for educational purposes. The System's model policies on student criminal background checks should be reviewed to determine if amendments are needed. Institutions should review their student criminal background check processes to determine whether the use of the TxDPS database should be incorporated for this group of students.

**Effective:** June 14, 2013

Barbara Holthaus

[HB 912](#) by Gooden, et al. and Estes

Relating to images captured by unmanned aircraft and other images and recordings; providing penalties.

HB 912 would enact the Texas Privacy Act (the "Act"). It would define terms, specify exceptions to applicability, and provide for criminal penalties and civil action.

HB 912 defines "image" as any capturing of sound waves, thermal, infrared, ultraviolet, visible light, or other electromagnetic waves, odor, or other conditions existing on or about real property or an individual located on that property.

HB 912 is not applicable in the following circumstances:

- HB 912 does not apply to images of real property or an individual on real property captured by an unmanned vehicle or unmanned aircraft for purposes of professional or scholarly research and development on behalf of an institution of higher education. This would include images taken by professors, employees, or students of the institution or people who were under contract with or otherwise acting under the direction or on behalf of the institution.
- HB 912 does not apply to airspace designated as a test site or range authorized by the Federal Aviation Administration for the purpose of integrating unmanned aircraft systems into the national airspace, or to an operation, exercise, or mission of any branch of the U.S. Military.
- HB 912 does not apply to images captured by or for an electric or natural gas utility for operations and maintenance of utility facilities for the purpose of maintaining utility system reliability and integrity; for inspecting utility facilities to determine repair, maintenance, or replacement needs during and after construction of such facilities; for assessing vegetation growth for the purpose of maintaining clearances on utility easements; and for utility facility routing and siting for the purpose of providing utility service.
- HB 912 does not apply to images captured with the consent of the individual who owns or lawfully occupies the real property captured in the image.
- HB 912 does not apply to images captured pursuant to a valid search or arrest warrant;
- HB 912 does not apply if the image is captured by a law enforcement authority or a person who is under contract with or otherwise acting under the direction or on behalf of a law enforcement authority: (A) in immediate pursuit of a person law enforcement officers have reasonable suspicion or probable cause to suspect has committed an offense, not including misdemeanors or offenses punishable by a fine only; (B) for the purpose of documenting a crime scene where an offense, not including misdemeanors or offenses punishable by a fine only, has been committed; (C) for the purpose of investigating the scene of a human fatality; a motor vehicle accident causing death or serious bodily injury to a person; or any motor vehicle accident on a state highway or federal interstate or highway; (D) in connection with the search for a missing person; (E) for the purpose of conducting a high-risk tactical operation that poses a threat to human life; or (F) of private property that is generally open to the public where the property owner consents to law enforcement public safety responsibilities.
- HB 912 does not apply if the image is captured by state or local law enforcement authorities, or a person who is under contract with or otherwise acting under the direction or on behalf of state authorities, for the purpose of: (A) surveying the scene of a catastrophe or other damage to determine whether a state of emergency should be declared; (B) preserving public safety, protecting property, or surveying damage or contamination during a lawfully declared state of

emergency; or (C) conducting routine air quality sampling and monitoring, as provided by state or local law.

- HB 912 does not apply to an image captured at the scene of a spill, or a suspected spill, of hazardous materials.
- HB 912 does not apply to an image captured for the purpose of fire suppression.
- HB 912 does not apply to images captured for the purpose of rescuing a person whose life or well-being is in imminent danger.
- HB 912 does not apply if the image captured by a Texas licensed real estate broker in connection with the marketing, sale, or financing of real property, provided that no individual is identifiable in the image.
- HB 912 does not apply if an image is captured of real property or a person on real property that is within 25 miles of the United States border;
- HB 912 does not apply if an image is from a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception.
- HB 912 does not apply to an image of public real property or a person on that property;
- HB 912 does not apply if the image is captured by the owner or operator of an oil, gas, water, or other pipeline for the purpose of inspecting, maintaining, or repairing pipelines or other related facilities, and is captured without the intent to conduct surveillance on an individual or real property located in this state.
- HB 912 does not apply in connection with oil pipeline safety and rig protection.
- HB 912 does not apply in connection with port authority surveillance and security.

HB 912 provides for criminal penalties. Pursuant to HB 912, it would be a class C misdemeanor (maximum fine of \$500) to use or authorize the use of an unmanned aircraft to capture an image of an individual or real property with the intent to monitor or conduct surveillance on the individual or real property captured in the image. The term “intent” has the same meaning assigned by Section 6.03 of the Penal Code. It would be a defense to prosecution against this offense that the person destroyed the image as soon as he or she had knowledge that it was captured in violation of the bill, and without disclosing, displaying, or distributing it to a third party.

Pursuant to HB 912, it would also be it would be a Class C misdemeanor (maximum fine of \$500) to possess, display, disclose, distribute, or otherwise use an image captured in

violation of the Act. Each image in violation of this offense would be a separate offense. It would be a defense to prosecution for possession if the person destroyed the image as soon as he or she had knowledge that it was captured in violation of the Act.

HB 912 also provides that it would be a Class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) for disclosure, display, distribution, or other use of an image. It would be a defense to disclosure, display, distribution, or other use if the person stopped disclosing, displaying, distributing, or otherwise using the image as soon as they had knowledge that it was captured in violation of the Act.

HB 912 further provides that images captured in violation of the Act, or an image captured by an unmanned aircraft that was incidental to the lawful capturing of an image:

- could not be used as evidence in any criminal or juvenile proceeding, civil action, or administrative proceeding;
- would not be subject to disclosure, inspection, or copying under the Public Information Act; and
- would not be subject to discovery, subpoena, or other legal compulsion for its release.
- These images could be disclosed and used as evidence to prove a violation of the Act and would be subject to discovery, subpoena, or other legal compulsion for that purpose.

Finally, HB 912 provides for a civil right of action. Pursuant to the Act, an individual who was the subject of an image — or who owned or who was a tenant of privately owned real property that was the subject of an image — captured, possessed, disclosed, displayed, distributed, or otherwise used in violation of the bill could bring a civil action to enjoin a violation or imminent violation of the bill; and recover a civil penalty of:

- \$5,000 for all images captured in a single episode;
- \$10,000 for disclosure, display, distribution, or other use of any images captured in a single episode; or
- actual damages if the disclosure, display, or distribution of the image was done with malice.

Courts would be required to award court costs and reasonable attorney's fees to the prevailing party. Venue would be governed by the Civil Practice and Remedies Code. The statute of limitations would be two years from the date the image was captured or two years from the date the image was first possessed, displayed, distributed, or otherwise used in violation of the Act.

HB 912 requires that the Department of Public Safety adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in this state.

HB 912 requires that no earlier than January 1 and not later than January 15 of each odd-numbered year, each state law enforcement agency and each county or municipal law enforcement agency located in a county or municipality, as applicable, with a population greater than 150,000 that used or operated an unmanned aircraft during the preceding 24 months issue a written report to the governor, the lieutenant governor, and each member of the legislature and must retain the report for public viewing; and post the report on the law enforcement agency's publicly accessible website, if one exists.

The report must include: the number of times an unmanned aircraft was used, organized by date, time, location, and the types of incidents and types of justification for the use; the number of criminal investigations aided by the use of an unmanned aircraft and a description of how the unmanned aircraft aided each investigation; the number of times an unmanned aircraft was used for a law enforcement operation other than a criminal investigation, the dates and locations of those operations, and a description of how the unmanned aircraft aided each operation; the type of information collected on an individual, residence, property, or area that was not the subject of a law enforcement operation and the frequency of the collection of this information; and the total cost of acquiring, maintaining, repairing, and operating or otherwise using each unmanned aircraft for the preceding 24 months.

**Impact:** HB 912 has no direct impact on UT System institutions. However, to the extent police departments at each institution utilize unmanned aircrafts, each should be aware of this legislation and its possible impact as it relates to use of such technology.

**Effective:** September 1, 2013

Melissa V. Garcia

**HB 1632** by Fletcher and Paxton

Relating to the confidentiality of certain identifying information of peace officers, county jailers, security officers, employees of the Texas Department of Criminal Justice or a prosecutor's office, or judges and their spouses.

This bill amends the Election Code so that the residence of an applicant is confidential and does not constitute public information per Chapter 552 of the Government Code if the applicant is an individual to whom Section 552.1175 of the Government Code applies. Section 552.1175 relates to the confidentiality of information relating to peace officers, county jailers, security officers, and employees of the Texas Department of Justice or a prosecutor's office.

In addition, in order for the residence of an applicant to whom Section 552.1175 applies or the residence of an applicant who is a federal or state judge or the spouse of one to be confidential, the applicant must: (a) include an affidavit with the registration or must provide one to the registrar describing the applicant's status, including an affidavit under Section 13.0021 or Section 15.0215 if the applicant is a federal or state judge or a spouse of one or (b) provide the registrar with a completed form approved by the secretary of state for the purpose of notifying the registrar of the applicant's status.

Section 552.1175 of the Government Code is also amended to include federal and state judges as being a category of individuals whose home address, telephone number, emergency contact information, social security number, and family member information is protected from disclosure under the provision. The provision is also expanded to include date of birth information as being confidential for the individuals to whom this provision applies.

**Impact:** The impact of this bill on UT System and its institutions is minimal but the bill makes date of birth information statutorily excepted from disclosure for employees who fall within the categories of individuals defined under Section 552.1175 of the Government Code. For all other employees of UT System and its institutions, date of birth information remains excepted from disclosure under a common law right to privacy.

**Effective:** June 14, 2013

Neera Chatterjee

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**Effective:** June 14, 2013

Neera Chatterjee

[HB 2268](#) by Frullo, et al. and Carona

Relating to search warrants issued in this state and other states for certain customer data, communications, and other related information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services.

Prior to this year, the Texas state laws on wiretaps, which applies to phone calls and emails in transit and its version of the federal Stored Communication Act mimicked the federal Wiretap act and Stored Communications Act which set different requirements for when a law enforcement officer can access emails and other electronic messages based on how long they have been held in storage by a communications service providers or a remote storage facility. For un-opened messages and message less than 180 day, a search warrant is required. For messages in storage over 180 days, only a subpoena or court order is required.

Under HB 2268, Texas eliminates the distinction and requires state law enforcement officers to obtain a search warrant to access the content of any email from a communications service providers or a remote storage facility.

User data and other meta-data about the message is still available through a subpoena or court order.

Communications service providers or remote storage facilities must also comply with out of state search warrants issued by a court of competent jurisdiction.

**Impact:** Courts are divided as to whether under federal law a public university is considered to be a communications service provider or a remote storage facility for purposes of compliance with the federal or state Stored Communications Act. Also, recent federal court cases recognize that the portions of the federal Stored Communication Act that permit access by law enforcement officers to the content of email messages without a warrant may violate the Fourth Amendment of the US Constitution which prohibits unlawful searches or seizures by the government. What is clear is that public universities, including System institutions, are governmental agencies for purposes of complying with the Fourth Amendment. This means that if a System institution wishes to conduct a search of employer or student emails held by or on behalf of the institution, it should follow its own policies for conducting employment related searches and consult with local counsel or the Office of General Counsel before conducting searches of student emails or responding to a search warrant, subpoena or court order issued by a state or federal law enforcement agency requesting access to either employee or student emails held by or on behalf of the institution.

**Effective:** June 14, 2013

Barbara Holthaus

[HB 2539](#) by Turner, et al. and Davis

Relating to requiring computer technicians to report images of child pornography; providing a criminal penalty.

HB 2539 adds a new Chapter 109 to the Business & Commerce Code requiring computer technicians (defined as individuals employed to install, repair, or otherwise service a computer for a fee) to report to a local or state law enforcement agency or the Cyber Tipline at the National Center for Missing and Exploited Children any images that are or that appear to be child pornography on a computer that the technician accesses in the course of his or her employment or business.

The new Chapter 109 makes the intentional failure of a computer technician to make such a report a Class B misdemeanor; however, Chapter 109 provides a defense to prosecution for such an offense if a report of an image of child pornography was not made because the child in the image appeared to be at least 18 years of age. Chapter 109 also states that computer technicians may not be held liable in civil actions for reporting or failing to report the discovery of such an image, except in cases of a technician's willful or wanton misconduct.

Furthermore, the new Chapter 109 provides that a telecommunications provider, commercial mobile service provider, or information service provider may not be held liable for the failure to report child pornography that is transmitted or stored by a user of its service.

**Impact:** UT System and the UT institutions both employ and contract with computer technicians; therefore, UT System and the UT institutions would need to ensure that such technicians comply with the requirements of the new Chapter 109.

**Effective:** September 1, 2013

Scott Patterson

[SB 146](#) by Williams and Kolkhorst.

Relating to access by a public institution of higher education to the criminal history record information of certain persons seeking to reside in on-campus housing.

The bill amends Texas Government Code Section 411.0945 to allow UT System institutions to access the non-public criminal history database maintained by the Texas Department of Public Safety (DPS) for the purpose of screening applications for student campus housing.

Only the institution's chief of police or housing office would be allowed to access the records obtained from the data base. The records could only be used for the purpose of evaluating the individual's campus housing application and all records obtained to conduct the screening must be destroyed once they are no longer required. If a criminal background check results in adverse action, the student who is subject to the adverse action must be notified. A court order or the applicant's consent would be required before the records could be disclosed or shared with any other individuals.

The institution would have to destroy any records obtained from DPS as soon as practicable after the beginning of the academic term for which the application was submitted.

**Impact:** UT System institutions now have the option to conduct a criminal history record information search for persons seeking to reside in on-campus housing. UTS 124, the Systemwide policy dealing with criminal background checks and model student criminal background check policies, are being reviewed to determine if amendments will be made to require a criminal background check for this group of individuals.

**Effective:** June 14, 2013

Barbara Holthaus

[SB 457](#) by Rodriguez and Marquez

Relating to the confidentiality of certain autopsy records.

The bill amends Section 11, Article 49.25 of the Code of Criminal Procedure to clarify that records kept by a medical examiner relating to an individual's death may not be withheld, except under a discretionary exception set forth in Chapter 552, Government Code. The bill distinguishes certain types of records maintained by the medical examiner: photographs or x-rays of a body taken during an autopsy, and states (in most instances) these records are excepted from disclosure and can be withheld by the medical examiner without having to request a decision from the Attorney General's office. However, the bill expressly states that a photograph or an x-ray of a body taken during an autopsy is subject to disclosure: (1) under a subpoena or authority of other law; or (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

**Impact:** If UT System or one of its institutions maintains records of a medical examiner, these records may be withheld from disclosure pursuant to a discretionary exception in Chapter 552. If the records that UT System or its institutions maintains includes a photograph or an x-ray of a body taken during an autopsy, the photograph or x-ray can be withheld without having to first seek permission via an opinion from the Attorney General's office; however, the photograph or x-ray must be disclosed in the limited circumstances described above. Public Information Coordinators at UT System and its institutions should be aware of this change in statute and the authority it provides them to automatically withhold the specific information at issue.

**Effective:** September 1, 2013

Zeena Angadicheril

**SB 1512** by Ellis and Vo

Relating to the confidentiality of certain crime scene photographs and video recordings.

SB 1512 amends the Government Code to make confidential a sensitive crime scene image, as defined by the bill's provisions, in the custody of a governmental body, regardless of the date that the image was taken or recorded, and to except such an image from disclosure under the Texas Public Information Act ("TPIA").

SB 1512 prohibits a governmental body from permitting a person to view or copy the sensitive crime scene image unless the person is one of the following:

- the deceased person's next of kin;
- a person authorized in writing by the deceased person's next of kin;
- a person being prosecuted for the death of the deceased person or convicted of an offense related to the death and appealing the conviction, or that defendant's attorney;
- a person who establishes an interest in a sensitive crime scene image that is based on, connected with, or in support of the creation of an expressive work, as defined by the bill's provisions;
- a person performing bona fide research sponsored by a public or private institution of higher education with approval of a supervisor of the research or a supervising faculty member;
- a state agency;
- an agency of the federal government; or
- a local governmental entity.

Governmental bodies can still seek to withhold a sensitive crime scene image from a person authorized to view the image on the grounds that the image is excepted from disclosure under the TPIA or other law.

If a governmental body receives a request for a sensitive crime scene image from a person who establishes an interest in the image that is based on an expressive work or who is performing bona fide research sponsored by an institution of higher education, SB 1512 requires the governmental body to notify the deceased person's next of kin of the request in writing, not later than the 10th business day after the request was received.

SB 1512 requires a governmental body to allow an authorized person to view or copy the requested image not later than the 10th business day after the date the governmental body receives the request, unless the governmental body files a request for an Attorney General opinion regarding whether the information is excepted from disclosure under the TPIA or other law.

**Impact:** Public Information Coordinators at UT System and its institutions should be aware of this new provision, particularly the list of persons authorized to view the sensitive crime scene images. In addition to the standard deadlines and notice requirements imposed by the TPIA, for requests that involve sensitive crime scene images, Public Information Coordinators should also be aware of the new statutory obligations to notify a deceased person's next of kin in certain specified circumstances.

**Effective:** September 1, 2013

Zeena Angadicheril

[SB 1609](#) by Schwertner and Kolkhorst, et al.

Relating to the training of employees of certain covered entities.

Health & Safety Code Section 181.101 currently requires state agencies and other entities that maintain and use protected health information, as that term is defined by HIPAA, to provide training to all employees regarding state and federal laws concerning the agency's particular course of business and each employee's scope of employment within sixty (60) days of their hire day. (HIPAA defines "protected health information" as information created or received by a health care provider, health plan, employer, or health care clearinghouse; that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual; or is reasonably believed to be used to identify the individual. However, such information contained in education records covered by FERPA, treatment records of students maintained by a health care provider, employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than 50 years is exempt from the definition of "protected health information.")

This bill changes the time period in which the training must be provided from within sixty (60) days of their hire date to within ninety (90) days of their hire date. It also omits the requirement that subsequent training be provided to all employees every two years. Instead, training must be provided within a reasonable time not to exceed one year after a material change in state or federal law that affects an employee's duties. Finally, it changes the verification requirements. Affected agencies must now obtain and maintain proof of completion of the training, rather than proof of attendance at the training, from each affected employee.

**Impact:** Under Chapter 181 of the Health & Safety Code, state agencies that are Covered Entities subject to HIPAA are permitted to comply with the specific requirements of HIPAA, rather than the requirements of Chapter 181. This means that

System institutions that are HIPAA Covered Entities and whose research and other offices are part of that Covered Entity are exempt from the training requirements required by this bill. Institutions that maintain protected health information in offices or areas that are not subject to HIPAA, and are therefore required to comply with Chapter 181, will benefit from the increased flexibility this bill will provide in complying with the training requirements.

**Effective:** June 14, 2013

Barbara Holthaus

[SB 1610](#) by Schwertner and Kolkhorst, et al.

Relating to the notification of individuals following a breach of security of computerized data.

SB 1610 clarifies that breach notices provided under the state law breach notification statute, Chapter 521 of the Business & Commerce Code, need only be provide to the affected individuals at their last known address. It allows affected entities to comply with the reporting requirements of the statute, if there are individuals affected by the breach who are residents of another state, by following the statute or by following the applicable breach notification law of the state where the individual resides.

**Impact:** System institutions should already be providing breach notices required by Chapter 521 by using the last known address on file for each affected individually and should also be providing the same notices to all individuals regardless of their state of residency. System institutions may want to review their internal breach compliance processes to ensure they are in compliance with the bill.

**Effective:** June 14, 2013

Barbara Holthaus

### **Public Information**

[HB 31](#) by Branch, et al. and Zaffirini

Relating to certain requirements applicable to meetings of the governing board of a general academic teaching institution or a state university system.

This bill adds a provision to Chapter 551 of the Government Code relating to regularly scheduled meetings of the governing board of a general academic teaching institution or university system which require notice. For such meetings, the governing board must post on its website the written agenda and any related supplemental materials provided to the board members for their use during the meeting. Written materials that the general counsel or other attorney for the institution certifies are confidential or protected from disclosure under Chapter 552 of the Government Code would not have to be posted. In

addition to posting the agenda and other materials on the website, the meeting, except for those portions that are closed to the public, must be broadcast on the internet and recorded such that the recording is publicly available on an online archive located on the system or university website. Compliance is not required if it is not possible due to an act of God, force majeure, or other cause not reasonably within the governing board's control. This provision applies only to meetings for which notice is given per Chapter 551 of the Government Code on or after January 14, 2014.

**Impact:** This bill impacts UT System as it not only requires that meetings of the Board of Regents which require public notice be available by the internet but it also requires that the agenda and other materials be posted on the UT System site; though counsel will have the discretion to determine which materials will not need to be posted due to their confidential nature.

**Effective:** June 14, 2013

Neera Chatterjee

[HB 1487](#) by Harper-Brown and Rodriguez

Relating to the Internet posting of certain information regarding state grants.

All state agencies, as defined in Section 403.013 of the Government Code, that award a state grant in an amount greater than \$25,000 are required to make available to the public on their website the purpose for which the grant was awarded by the agency. In addition, the state agency is required to provide the comptroller a link to the information so that the comptroller can maintain the information on its website through a central internet portal.

**Impact:** Since UT System and its institutions are state agencies as defined under Section 403.013 of the Government Code, to the extent that they award grants in excess of \$25,000, they will need to comply with this provision and post the required information on their websites and report the information to the comptroller. This bill will require UT System and its institutions to update their websites accordingly.

**Effective:** September 1, 2013

Neera Chatterjee

[HB 1632](#) by Fletcher and Paxton

Relating to the confidentiality of certain identifying information of peace officers, county jailers, security officers, employees of the Texas Department of Criminal Justice or a prosecutor's office, or judges and their spouses.

This bill amends the Election Code so that the residence of an applicant is confidential and does not constitute public information per Chapter 552 of the Government Code if the applicant is an individual to whom Section 552.1175 of the Government Code applies. Section 552.1175 relates to the confidentiality of information relating to peace

officers, county jailers, security officers, and employees of the Texas Department of Justice or a prosecutor's office.

In addition, in order for the residence of an applicant to whom Section 552.1175 applies or the residence of an applicant who is a federal or state judge or the spouse of one to be confidential, the applicant must: (a) include an affidavit with the registration or must provide one to the registrar describing the applicant's status, including an affidavit under Section 13.0021 or Section 15.0215 if the applicant is a federal or state judge or a spouse of one or (b) provide the registrar with a completed form approved by the secretary of state for the purpose of notifying the registrar of the applicant's status.

Section 552.1175 of the Government Code is also amended to include federal and state judges as being a category of individuals whose home address, telephone number, emergency contact information, social security number, and family member information is protected from disclosure under the provision. The provision is also expanded to include date of birth information as being confidential for the individuals to whom this provision applies.

**Impact:** The impact of this bill on UT System and its institutions is minimal but the bill makes date of birth information statutorily excepted from disclosure for employees who fall within the categories of individuals defined under Section 552.1175 of the Government Code. For all other employees of UT System and its institutions, date of birth information remains excepted from disclosure under a common law right to privacy.

**Effective:** June 14, 2013

Neera Chatterjee

[HB 2414](#) by Button, et al. and Deuell

Relating to open meetings of governmental bodies held by videoconference call and to written electronic communications between members of a governmental body.

The Open Meetings Act is amended such that the term "videoconference call" is defined as communication between two or more people in which at least one person participating in the call communicates with the other participants through duplex audio and video signals transmitted over a telephone or data network or the internet. A member or employee of a governmental body may participate remotely in a meeting of the governmental body through a videoconference call if the video and audio feed of the individual's participation is broadcast live at the meeting and otherwise complies with Section 551.127 of the Government Code. A member of a governmental body who participates in a meeting by a videoconference call is considered to be present at the meeting.

A meeting of a governmental body may only be held by videoconference call if the governmental body makes available to the public at least one suitable physical space located in or within a reasonable distance from the governmental body and the member of the governmental body that is presiding over the meeting is present in that space. The

space must be equipped with videoconference equipment which provides audio and video display and a camera and microphone so that a member of the public may provide testimony or otherwise participate in the meeting in the same manner as if the meeting was not conducted by a videoconference call. In addition, the space must have two-way audio and video communication with every member who is participating by videoconference call and each participant in the videoconference call must be clearly visible and audible to the other participants and the members of the public in attendance at the physical location. The notice of a meeting held by videoconference must specify the location of the required physical space.

In addition, this bill adds a provision to the Open Meetings Act where electronic communications between members of a governmental body about public business or public policy over which the governmental body has control is not considered a meeting or deliberation for purposes of the Open Meetings Act if the communication is in writing, the writing is posted on the internet in a manner that is viewable and searchable by the public and the communication is displayed in real time and displayed online for at least 30 days after it is posted.

A governmental body can have no more than one internet application for posting this information and the application must be owned or controlled by the governmental body, prominently displayed on the governmental body's primary website and no more than one click away from the governmental body's primary website. The internet application can only be used by members of the governmental body or staff authorized by a member of the governmental body. Authorized personnel that post a communication on the application must also post their name and title. Once a message is removed from the website after being posted for at least thirty days, it must be maintained by the governmental body for six years and is considered public information and must be disclosed under Chapter 552 of the Government Code. Finally, the governmental body may not take a vote or any action that is required to be taken at a meeting by posting a communication to the internet application. A post or communication on the internet site is not an action of the governmental body.

The changes as outlined in this bill apply only to meetings held on or after the effective date of this bill.

**Impact:** The use of videoconferencing by the UT System Board of Regents during meetings is made easier under this bill and can potentially help reduce the costs associated with meetings of the UT System Board of Regents. In addition, this bill eases certain restrictions in the Open Meetings Act relating to electronic communications by allowing electronic communications between members of the UT System Board of Regents if the requirements outlined in this bill are met.

**Effective:** June 14, 2013

Neera Chatterjee

[SB 457](#) by Rodriguez and Marquez

Relating to the confidentiality of certain autopsy records.

The bill amends Section 11, Article 49.25 of the Code of Criminal Procedure to clarify that records kept by a medical examiner relating to an individual's death may not be withheld, except under a discretionary exception set forth in Chapter 552, Government Code. The bill distinguishes certain types of records maintained by the medical examiner: photographs or x-rays of a body taken during an autopsy, and states (in most instances) these records are excepted from disclosure and can be withheld by the medical examiner without having to request a decision from the Attorney General's office. However, the bill expressly states that a photograph or an x-ray of a body taken during an autopsy is subject to disclosure: (1) under a subpoena or authority of other law; or (2) if the photograph or x-ray is of the body of a person who died while in the custody of law enforcement.

**Impact:** If UT System or one of its institutions maintains records of a medical examiner, these records may be withheld from disclosure pursuant to a discretionary exception in Chapter 552. If the records that UT System or its institutions maintains includes a photograph or an x-ray of a body taken during an autopsy, the photograph or x-ray can be withheld without having to first seek permission via an opinion from the Attorney General's office; however, the photograph or x-ray must be disclosed in the limited circumstances described above. Public Information Coordinators at UT System and its institutions should be aware of this change in statute and the authority it provides them to automatically withhold the specific information at issue.

**Effective:** September 1, 2013

Zeena Angadicheril

[SB 458](#) by Rodriguez and Marquez

Relating to certain motor vehicle records excepted from disclosure under the Public Information Act.

The bill modifies Section 552.130(c) of the Government Code to authorize a governmental body, without requesting a decision from the Attorney General, to redact a motor vehicle title or registration issued by an agency of Texas or another state or country from any information the governmental body discloses under the Texas Public Information Act.

**Impact:** Subject to certain limitations set forth in the Transportation Code, the bill will allow UT System and its institutions to automatically withhold information issued by any state relating to motor vehicle title or registration – without needing to seek an AG opinion prior to withholding. Public Information Coordinators at UT System and its institutions should be aware of this change in statute and the authority it provides them to automatically withhold the specific information at issue.

**Effective:** May 18, 2013

Zeena Angadicheril

**SB 895** by Davis, et al and Alvarado, et al

Relating to access to records of a nonprofit organization supporting the Cancer Prevention and Research Institute of Texas under the public information law.

SB 895 amends Health and Safety Code (Section 102.262) to provide that records of a nonprofit organization established to provide support to the Cancer Prevention and Research Institute of Texas (CPRIT) are public information available through the Texas Public Information Act.

**Impact:** This bill directly impacts the CPRIT Foundation's ability to maintain confidentiality of its records by making its records subject to the Public Information Act. There is no direct impact on UT institutions.

**Effective:** June 14, 2013

BethLynn Maxwell

**SB 983** by Ellis and Harper-Brown

Relating to in camera review and filing of the information at issue in a suit filed under the public information law.

SB 983 amends the Government Code to authorize that in any lawsuit filed under the Public Information Act, the information at issue may be filed with the court for in camera inspection as is necessary for the adjudication of the case. The bill requires the court, on receipt of information at issue for in camera inspection, to enter an order that would prevent the release or access by any person other than the court, a reviewing court of appeals, or parties permitted to inspect the information pursuant to a protective order. The bill requires the information at issue filed with the court for in camera inspection to be appended to the order and transmitted by the court to the clerk for filing as "information at issue," to be maintained in a sealed envelope or in a manner that precludes disclosure, and to be transmitted by the clerk to any court of appeal as part of the clerk's record. The bill establishes that such information does not constitute "court records" within the meaning Texas Rules of Civil Procedure Rule 76a and prohibits the clerk or any custodian of record from making such information available for public inspection.

**Impact:** Attorneys and other employees involved in lawsuits filed under the Texas Public Information Act should be aware of this clarification in statute to ensure that information that is the subject of such lawsuit remains properly protected from disclosure while the lawsuit is being adjudicated.

**Effective:** September 1, 2013

Zeena Angadicheril

**SB 1297** by Watson and Branch

Relating to written electronic communications between members of a governmental body.

This bill adds a provision to the Open Meetings Act where electronic communications between members of a governmental body about public business or public policy over which the governmental body has control is not considered a meeting or deliberation for purposes of the Open Meetings Act if the communication is in writing, the writing is posted on the internet in a manner that is viewable and searchable by the public and the communication is displayed in real time and displayed online for at least 30 days after it is posted.

A governmental body can have no more than one internet application for posting this information and the application must be owned or controlled by the governmental body, prominently displayed on the governmental body's primary website and no more than one click away from the governmental body's primary website. The internet application can only be used by members of the governmental body or staff authorized by a member of the governmental body. Authorized personnel that post a communication on the application must also post their name and title. Once a message is removed from the website after being posted for at least thirty days, it must be maintained by the governmental body for six years and is considered public information and must be disclosed under Chapter 552 of the Government Code. Finally, the governmental body may not take a vote or any action that is required to be taken at a meeting by posting a communication to the internet application. A post or communication on the internet site is not an action of the governmental body.

**Impact:** This bill eases certain restrictions in the Open Meetings Act relating to electronic communications by allowing electronic communications between members of the UT System Board of Regents if the requirements outlined in the bill are met.

**Effective:** September 1, 2013

Neera Chatterjee

**SB 1368** by Davis and Alvarado, et al.

Relating to public information pertaining to the official business of governmental bodies and to contracts by certain state governmental entities that involve the exchange or creation of public information.

This bill was filed in response to concerns that private entities under contract with the state were refusing to turn over state-related records, by claiming that the private entities were not subject to the Texas Public Information Act ("TPIA"). SB 1368 amends the Government Code to clarify that the records of a private entity under contract with the

state to provide goods or services are subject to open records laws, to the extent to which those records are considered public information under the TPIA. To further clarify this position, the bill requires that contracts between a governmental entity and a private vendor involving the exchange or creation of public information: (1) must be drafted in consideration of the requirements of the TPIA; and (2) must contain a provision that requires the vendor to make information not otherwise excepted from disclosure available in a specific format that is agreed upon in the contract and accessible by the public. SB 1368 applies to contracts that originated from advertisements or bids solicited on or after September 1, 2013.

SB 1368 also amends the definition of “public information” in Section 552.002 of the TPIA. Under the updated definition, public information expressly includes information towards which a governmental body spent or contributed public money. The definition of public information is also expanded to encompass electronic communications and includes specific references to e-mail, internet postings, text messages, instant messages and other electronic communications. The bill also specifies that public information applies to and includes any electronic communications created, transmitted, received or maintained on any device if the communication was made in connection with the transaction of official governmental business.

**Impact:** Public Information Coordinators and individuals involved in the procurement process at System and its institutions should be aware of this bill. The bill will affect UT System and its institutions internally, and will also affect the third parties with whom UT System and its institutions contract. Depending on the type of access UT System and its institutions currently have to information maintained by its third party vendors, the expanded definition of public information could capture items beyond what we currently have a contractual right to access; the impact of this bill would need to be discussed with contracting third party vendors. Future contracts will also have to be drafted to contain the provision expressly required by the bill. Also, the bill arguably codifies the concept that it is content of information rather than device on which it is transmitted that governs whether information is subject to the Act. This language is consistent with and supports the approach and interpretation of the Act that UT System and its institutions currently follow.

**Effective:** September 1, 2013

Zeena Angadicheril

**SB 1512** by Ellis and Vo

Relating to the confidentiality of certain crime scene photographs and video recordings.

SB 1512 amends the Government Code to make confidential a sensitive crime scene image, as defined by the bill's provisions, in the custody of a governmental body, regardless of the date that the image was taken or recorded, and to except such an image from disclosure under the Texas Public Information Act (“TPIA”).

SB 1512 prohibits a governmental body from permitting a person to view or copy the sensitive crime scene image unless the person is one of the following:

- the deceased person's next of kin;
- a person authorized in writing by the deceased person's next of kin;
- a person being prosecuted for the death of the deceased person or convicted of an offense related to the death and appealing the conviction, or that defendant's attorney;
- a person who establishes an interest in a sensitive crime scene image that is based on, connected with, or in support of the creation of an expressive work, as defined by the bill's provisions;
- a person performing bona fide research sponsored by a public or private institution of higher education with approval of a supervisor of the research or a supervising faculty member;
- a state agency;
- an agency of the federal government; or
- a local governmental entity.

Governmental bodies can still seek to withhold a sensitive crime scene image from a person authorized to view the image on the grounds that the image is excepted from disclosure under the TPIA or other law.

If a governmental body receives a request for a sensitive crime scene image from a person who establishes an interest in the image that is based on an expressive work or who is performing bona fide research sponsored by an institution of higher education, SB 1512 requires the governmental body to notify the deceased person's next of kin of the request in writing, not later than the 10th business day after the request was received.

SB 1512 requires a governmental body to allow an authorized person to view or copy the requested image not later than the 10th business day after the date the governmental body receives the request, unless the governmental body files a request for an Attorney General opinion regarding whether the information is excepted from disclosure under the TPIA or other law.

**Impact:** Public Information Coordinators at UT System and its institutions should be aware of this new provision, particularly the list of persons authorized to view the sensitive crime scene images. In addition to the standard deadlines and notice requirements imposed by the TPIA, for requests that involve sensitive crime scene images, Public Information Coordinators should also be aware of the new statutory obligations to notify a deceased person's next of kin in certain specified circumstances.

**Effective:** September 1, 2013

Zeena Angadicheril

## **Reports**

[HB 16](#) by Flynn, et al. and Ellis

Relating to a requirement that a state agency post its internal auditor's audit plan and audit report and other audit information on the agency's Internet website.

This bill creates a new section 2102.015 of the Texas Government Code. It requires that a state agency post on their website, the agency's internal audit plan and the agency's annual audit report.

The state agency is not required to post information that is confidential or excepted from public disclosure under the Public Information Act.

The state auditor shall determine the time and manner in which information shall be posted and updated. A detailed summary must include the weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit plan or annual report.

The posting must also include a summary of the action taken by the agency to address the concerns raised by the audit plan or annual report.

**Impact:** This bill will generally require that UT System's and each component institution's internal audit plan and annual audit report be published on their respective internet websites. Much of the administrative detail of how such online posting of data will take place is left to the State Auditor.

**Effective:** June 14, 2013

Jason D. King

[HB 2036](#) by Branch and Watson, et al.

Relating to the creation of a commission to identify future higher education and workforce needs of this state and make related recommendations to address those needs by the state's bicentennial.

This bill creates the Texas 2036 Commission. The commission will have 11 members, including the chair of a governing board of an institution of higher education appointed by the governor. The purpose of the commission is to assess and identify future higher education and workforce needs of the state, the state's ability to meet those needs, and develop recommendations for meeting those needs by 2036. The committee shall issue a

report on January 1 of each odd-numbered year. The committee will be abolished on January 1, 2037.

**Impact:** The 2036 Commission may include a UT Regent, and the Commission will make recommendations on higher education to the legislature for the next twenty four years. These recommendations may impact UT System and its component institutions.

**Effective:** June 14, 2013

Jason D. King

**HCR 82** by Hunter, et al. and Hinojosa

Requesting the creation of a joint interim committee to study education policy as it relates to developing a skilled workforce.

This resolution requests that the lieutenant governor and speaker create a joint interim committee to study education policy as it relates to developing a skilled workforce.

**Impact:** Due to the subject matter covered by the joint interim committee, all UT component institutions should be aware of the committee and be prepared to provide assistance to the committee if requested.

**Effective:** June 14, 2013

Jason D. King

**SB 59** by Nelson and Callegari

Relating to required reports and other documents prepared by state agencies and institutions of higher education.

Among other things, SB 59 modifies reporting requirements of various state entities (including institutions of higher education) to eliminate reporting requirements, modify due dates, designated recipients of required reports, and authorize electronic reporting methods.

**Section 11:** Amends Section 51.406(c) and (d), Education Code, to add additional reports to the list of reports excluded from the higher education reporting exemption that will go into effect *September 1, 2013*, including:

- Annual audits of all law enforcement agencies and attorneys representing the state who receive proceeds or property under Chapter 59, Code of Criminal Procedure, to account for the seizure, forfeiture, receipt, and specific expenditure of all the proceeds and property;

- Itemized annual budgets to be approved by the governing board of each institution and provided to various governmental bodies;
- Reports of amount of restricted research funds expended by an institution in a fiscal year to be reported to the THECB;
- Affidavits by a peace officer related to the suspension of a concealed handgun carry license;
- Reports related to collection and payment of social security for public officers and employees;
- Reports regarding collection of Texas Employment Retirement System fees and contributions;
- Reports required by Insurance Code, Title 8. HEALTH INSURANCE AND OTHER HEALTH COVERAGES, Subtitle H. HEALTH BENEFITS AND OTHER COVERAGES FOR GOVERNMENTAL EMPLOYEES, Chapter 1551 TEXAS EMPLOYEES GROUP BENEFITS ACT; and
- Requests for information by the state auditor.

**Section 20:** Revises Section 151.008, Education Code (related to reporting by members of the *Border Health Institute*), to require that the Institute (not the members) prepare a long-term strategic plan that includes information on topics specified by revised Section 151.008.

**Section 25:** Amends Section 324.008(d), Government Code, to require the governing body of a state agency (including an institution of higher education) to deliver a certified copy of the minutes of any meeting of the governing body to the Texas State Library and Archives Commission and the Legislative Reference Library. Section 324.008(d) currently requires delivery of the minutes only to the Legislative Reference Library.

**Section 41:** Amends Section 661.202, Government Code, to require that state agencies maintain policies and procedures for extensions of leave given under an exception based on the individual's particular circumstances [ref. Section 661.202(i), Government Code] and provide those policies and procedures to the state auditor only upon the state auditor's request (rather than keep the policies and procedures on file with the state auditor). Section 661.202, Government Code, appears to apply to institutions of higher education [ref. Section 661.001(4), Government Code].

**Section 43:** Section 772.009(f), Government Code, requires each *state agency* (ref. Section 751.001, Government Code) to designate an employee on the management or senior staff level to serve as the agency's federal funds coordinator. Among other things, each federal funds coordinator must send the grant writing team in the Governor's Office of Budget and Planning, a *quarterly report listing the grants for which the agency has applied*.

Section 43 amends Section 772.009(f) to change the reporting requirement from quarterly to annual.

Section 772.009(g), Government Code, requires each state agency or institution to file an annual report with the grant writing team concerning the agency's efforts in acquiring available discretionary federal funds during the preceding state fiscal year.

Section 43 amends *only* Section 772.009(g) to exclude institutions of higher education from this reporting requirement.

**Section 49 and Section 98:** Section 49 adds Section 2054.1211, Chapter 2054 INFORMATION RESOURCES, Subchapter F. OTHER POWERS AND DUTIES OF STATE AGENCIES, Government Code, to (1) require the Department of Information Resources and the Information Technology Council for Higher Education to review all plans and reports required of institutions of higher education under Chapter 2054; and (2) provide that, after September 1, 2014, an institution of higher education is not required to prepare or submit a plan or report generally required of a state agency under Chapter 2054, except to the *extent expressly provided by a rule adopted by the department on or after September 1, 2013.*

Section 98 requires the Department of Information Resources and the Information Technology Council for Higher Education to complete the review required under Section 2054.1211 not later than March 1, 2014.

**Section 50:** Adds Section 2102.0091(d), Government Code, to authorize the Legislative Budget Board or the Governor's Office of Budget, Planning and Policy to compel a state agency to file with the Sunset Advisory Commission, Governor's Office of Budget, Planning and Policy, the state auditor, and the Legislative Budget Board a copy of each report submitted by the agency's internal auditor to the state agency's governing board or the administrator of the state agency. New Section 2102.0091(d) appears to apply to institutions of higher education based on the definition of "state agency" in Section 2102.003(5) which includes a department, board, bureau, institution, commission, or other agency in the executive branch of state government.

**Section 58:** Adds Section 2166.409 STATE AGENCY ENERGY SAVINGS PROGRAM, Subchapter I. CONSERVATION OF ENERGY AND WATER, Chapter 2166 BUILDING CONSTRUCTION AND ACQUISITION, Subtitle D. STATE PURCHASING AND GENERAL SERVICES, Title 10 GENERAL GOVERNMENT, Government Code, to require each state agency to (1) develop a plan for conserving energy that includes a percentage goal for reducing the agency's use of electricity, gasoline, and natural gas, and (2) file a quarterly report with the Governor and the Legislative Budget Board listing the goals identified in the agency's energy conservation plan and a description of the progress made by the agency in meeting those goals. The report must include ideas for additional energy savings developed by the agency. In addition, each state agency must make the report available to the public by posting the report in a conspicuous place on the agency's Internet website. Section 2151.002, Government Code, states that except as otherwise provided by Subtitle D, "state agency"

includes a university system or an institution of higher education as defined by Section 61.003, Education Code, except a public junior college.

**Section 59:** Amends Section 2205.039 TRAVEL LOG, Subchapter B. STATE AIRCRAFT, Chapter 2205 AIRCRAFT POOLING, Government Code, to change a state agency's obligation to send aircraft travel logs to the Texas Department of Transportation on an annual basis (rather than a monthly basis). In Chapter 2205, "state agency" means an office, department, board, commission, institution, or other agency to which a legislative appropriation is made.

**Section 64:** Adds Section 103.013(g), Health and Safety Code, to permit each state agency impacted by the state plan for diabetes treatment, education, and training, to publish on the Internet the report required by Section 103.013(f): (1) listing resources required to implement the portions of the state plan affecting that agency; (2) indicating whether that agency will seek funds to implement those portions of the state plan; and (3) identifying each deviation from the state plan, including an explanation for the deviation, so long as each agency entitled to receive the report is notified the report is available on the Internet.

**Section 66:** Adds Section 161.032(g), Health and Safety Code, to provide that records of a medical committee of a university medical school or a health science center, including a joint committee, may be disclosed to the extent required under federal law as a condition of receipt of federal money.

**Section 67:** Adds Section 361.5061 Planning and Reporting Requirements: Institutions of Higher Education, Subchapter Q. POLLUTION PREVENTION, Chapter 361 SOLID WASTE DISPOSAL ACT, Health and Safety Code, to permit an institution of higher education that is required to develop a source reduction and waste minimization plan under Subchapter Q for more than one (1) facility to: (1) develop and submit one (1) plan that covers all of the facilities; and (2) submit one (1) annual report and one executive summary under Section 361.506 that covers all of the facilities.

**Section 68:** Adds Section 534.068(a-1) AUDITS, Subchapter B. COMMUNITY-BASED SERVICES, Chapter 534 COMMUNITY SERVICES, Health and Safety Code, to authorize a *local mental health and mental retardation authority* to publish audits required by Section 534.068(a) on its Internet site and notify the Texas Department of Mental Health and Mental Retardation (MHMR) that the information is available on the Internet.

Section 531.002 defines local mental health and mental retardation authority as follows:

"Local mental health authority" means an entity to which the Texas Board of Mental Health and Mental Retardation (board) delegates its authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental health services to persons with mental

illness in the most appropriate and available setting to meet individual needs in one or more local service areas.

"Local mental retardation authority" means an entity to which the board delegates its authority and responsibility within a specified region for planning, policy development, coordination, including coordination with criminal justice entities, and resource development and allocation and for supervising and ensuring the provision of mental retardation services to persons with mental retardation in the most appropriate and available setting to meet individual needs in one or more local service areas.

Section 68 also adds Section 534.068(g) to authorize MHMR to publish reports summarizing *local mental health and mental retardation authority* audits required by Section 534.068(f) on the MHMR web site and notify the parties designated to receive the report that the information is available on the Internet.

**Section 75:** Section 134.0041(a) RESOURCE ALLOCATION PLAN, Chapter 134 INTERAGENCY COUNCIL FOR GENETIC SERVICES, Human Resources Code, requires the Interagency Council for Genetic Services (Council) to develop a resource allocation plan (Plan) recommending how funds for genetic services should be spent during the next fiscal biennium. Section 134.0041(g) requires a state agency or medical school affected by the Plan to *use the Plan as the basis for its request for appropriations during the next biennium unless the agency or school disagrees with the Plan*. The Council includes a representative of The University of Texas health science centers, appointed by the Chancellor of The University of Texas System [ref. Section 134.001(b)(4), Human Resources Code].

Section 75 amends Section 134.0041(g), to require agencies or medical schools that disagree with the Plan or intend to deviate from the Plan in its budget request, to submit to the Council and the Governor's Office of Budget, Planning and Policy a written explanation of each disagreement or deviation. Section 134.0041(g) previously required that the written explanation be submitted to the Legislative Budget Board as well.

**Section 93:** Amends Section 456.008(a), Transportation Code, to specify the contents of an annual report by the Texas Transportation Commission regarding public transportation providers that receive state or federal funding. The report must: (1) detail the performance of the transportation providers; and (2) list ridership, mileage, revenue and effectiveness data. Section 456.001(3), Transportation Code, defines "public transportation" as transportation of passengers and their hand-carried packages or baggage on a regular or continuing basis by means of surface or water, including fixed guideway or underground transportation or transit, other than aircraft, taxicab, ambulance, or emergency vehicle.

**Section 97:** Section 34, Chapter 1409 (H.B. 4586), Acts of the 81st Legislature, Regular Session, 2009, requires each state agency and institution of higher education receiving certain appropriations in 2007 to submit various plans and reports to the Legislative Budget Board (LBB) and the Governor providing details on the intended use and the

expenditure of appropriations received from money available under the American Recovery and Reinvestment Act (ARRA).

Section 97 amends Section 34 to provide that after an agency or institution that receives money under ARRA has spent all the money received and completed all projects, the agency or institution is no longer required to submit these reports to the LBB.

**Section 99:** Repeals the following statutes:

- Section 29.160(e) and (f), Education Code, permitting the State Center for Early Childhood Development, in conjunction with a school district, regional education service center, *institution of higher education*, local government, local workforce development board, or community organization, to develop a quality rating system demonstration project under which prekindergarten program providers, licensed child-care facilities, or Head Start and Early Head Start program providers are assessed under a quality rating system. Section 29.160(e) and (f) required the State Center for Early Childhood Development and any other entity that implements a demonstration project to provide a report to the legislature and to the state agencies with regulatory jurisdiction over the subject matter involved in the project. Section 99 repeals the reporting requirements set out in Section 29.160(e) and (f).
- SUBCHAPTER L. CONDITIONAL GIFTS FROM FOREIGN PERSONS, Chapter 51 PROVISIONS GENERALLY APPLICABLE TO HIGHER EDUCATION, Education Code, requiring the governing board of any public university or other public institution of higher education located within this state, including, institutions of higher education as defined in Subdivision (7) of Section 61.003, Education Code, that receives a conditional gift from a foreign person or an agent or representative of a foreign person to file with the secretary of state a disclosure statement in accordance with federal law. Section 99 repeals Subchapter L, Chapter 51, Education Code.
- Section 54.777(c), Subchapter H. PREPAID TUITION UNIT UNDERGRADUATE EDUCATION PROGRAM: TEXAS TOMORROW FUND II, Chapter 54 TUITION AND FEES, Education Code, requiring the Prepaid Higher Education Tuition Board to provide the Texas Higher Education Coordinating Board complete prepaid tuition contract sales information, including projected enrollments of beneficiaries at general academic teaching institutions and two-year institutions of higher education.
- Section 61.0761(d), Education Code, requiring the Commissioner of Education and the Texas Higher Education Coordinating Board (THECB) to submit a report describing progress in implementing the College Readiness and Success Strategic Action Plan.
- Section 74.004(d), Education Code, requiring UTMB to report to the Legislative Budget Board in December of each even-numbered year all eligible gifts, grants,

and donations paid to the Centennial Scholars Matching Fund from private sources during the biennium.

- Section 825.510 BUDGET AND INVESTMENT INFORMATION, Subchapter F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES, Chapter 825 ADMINISTRATION, Subtitle C. TEACHER RETIREMENT SYSTEM OF TEXAS, Title 8 PUBLIC RETIREMENT SYSTEMS, Government Code, requiring the Teacher Retirement System (TRS) to: (1) annually file with the LBB a report showing investments of TRS as of the last day of the preceding fiscal year, investments made or disposed of during that year, income or losses in the various kinds of investments, and a comparison of investment performance to nationally recognized indexes [this report is the only periodic report of investments required to be made by TRS other than; (i) a report required by Section 802.106 providing information to a member or annuitant of TRS, or (ii) a report required by the state auditor]; and (2) file with the LBB for review and comment a copy of each proposed annual budget of TRS.
- Section 825.518. ANNUAL REPORT, Subchapter F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES, Chapter 825 ADMINISTRATION, Subtitle C. TEACHER RETIREMENT SYSTEM OF TEXAS, Title 8 PUBLIC RETIREMENT SYSTEMS, Government Code, requiring TRS to submit a statistical analysis based on information compiled under Section 822.005(d) (related to applications to withdraw accumulated contributions by persons who are absent from service except by death or retirement) each fiscal year to the governor, the lieutenant governor, the speaker of the house of representatives, the executive director of the State Pension Review Board, the appropriate oversight committees of the house and senate, and the LBB.
- Section 2155.448(c), Government Code, requiring each state agency to include in the state agency's annual report (required by Section 2101.0115, Government Code) expenditures made during the preceding state fiscal year for recycled, remanufactured, or environmentally sensitive commodities or services.

**Impact:**

**Section 11:** Impacts UT by specifying additional reports that are not exempt from reporting requirements under 51.406, Education Code.

**Section 20:** Impacts UT by moving the Border Health Institute reporting requirement from the members of the Institute to the Institute itself.

**Section 25:** In addition to providing a certified copy of Board meeting minutes to the Legislative Reference Library, the UT System Board Office will now need to provide a certified copy to the Texas State Library and Archives Commission.

**Section 41:** Impacts UT institutions by lessening reporting requirements related to policies and procedures for extensions of leave given under an exception based on the individual's particular circumstances [ref. Section 661.202(i), Government Code].

**Section 43:** Decreases the frequency for reports by UT federal funds coordinators to the Governor's Office of Budget and Planning from quarterly to annual [ref. Section 772.009(f)]. Also amends Section 772.009(g) to exclude institutions of higher education from the requirement that UT federal funds coordinators submit annual reports to the grant writing team related to UT's efforts in acquiring available discretionary federal funds during the preceding state fiscal year.

**Section 49:** Impacts UT institutions by: (1) requiring the Department of Information Resources and the Information Technology Council for Higher Education to review all plans and reports required of institutions of higher education under Chapter 2054; and (2) providing that, after September 1, 2014, a UT institution is not required to prepare or submit a plan or report generally required of a state agency under Chapter 2054, except to the extent expressly provided by a rule adopted by the department on or after September 1, 2013.

**Section 50:** Authorizes the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy, to compel UT institutions to file (with the Sunset Advisory Commission, Governor's Office of Budget, Planning and Policy, the state auditor, and the Legislative Budget Board) a copy of each report submitted by the UT institution's internal auditor to the institution's governing board or the administrator of the institution.

**Section 58:** UT institutions are required by Chapter 447, Government Code to: (1) prepare a 5-year energy savings plan [including percentage goals for savings in electricity and water]; and (2) file that plan with the State Energy Conservation Office every 2 years. New Section 2166.409, Government Code, requires UT institutions to prepare a similar energy savings report and file that report quarterly.

**Section 59:** Requires that UT send aircraft travel logs to the Texas Department of Transportation on an annual basis (rather than a monthly basis).

**Section 64:** Permits any UT institution impacted by the state plan for diabetes treatment, education and training, to publish the required report on the Internet.

**Section 66:** Permits disclosure of records of a medical committee of a university medical school or a health science center to the extent required under federal laws as a condition of receipt of federal money. **Section 67:** Authorizes institutions of higher education that are required to develop a source reduction and waste minimization plan for more than one facility to: (1) develop and submit one plan that covers all of those facilities; and (2) submit one annual report and one executive summary under Section 361.506 that covers all of those facilities.

**Section 68:** Authorizes UT institutions that act as a local mental health or mental retardation authority to publish audits required by Section 534.068(a) on the institution's Internet site.

**Section 75:** Impacts UT institutions that are required to use the Council’s Plan as the basis for the institution’s request for appropriations during the next biennium, by eliminating reporting to the Legislative Budget Board. Reporting to other state entities is still required.

**Section 93:** If any UT institution is a “public transportation” provider that receives state or federal funding, then an existing Texas Transportation Commission report on public transportation providers will include ridership, mileage, revenue and effectiveness data about the public transportation provided by that institution.

**Section 97:** Impacts UT institutions the receive ARRA funds by eliminating the requirement to report to the LBB after the institution has spent all the ARRA money and completed all projects.

**Section 99:**

- Repeals certain reporting requirements for UT institutions that have developed or do develop a quality rating system demonstration project under which pre-kindergarten program providers, licensed child-care facilities, or Head Start and Early Head Start program providers are assessed through a quality rating system.
- To the extent UT institutions receive conditional gifts from foreign persons or agents or representatives of foreign persons, this bill eliminates the requirement to file with the secretary of state the related disclosure statement required by federal law.
- The Prepaid Higher Education Tuition Board will no longer provide to THECB complete prepaid tuition contract sales information, including projected enrollments of beneficiaries at general academic teaching institutions and two-year institutions of higher education.
- The Commissioner of Education and THECB will no longer report progress in implementing the College Readiness and Success Strategic Action Plan.
- UTMB will no longer be required to report on private source donations made to the Centennial Scholars Matching Fund.
- TRS will no longer file with the LBB: (1) a report showing investments of TRS as of the last day of the preceding fiscal year, investments made or disposed of during that year, income or losses in the various kinds of investments, and a comparison of investment performance to nationally recognized indexes [this report is the only periodic report of investments required to be made by TRS other than; (i) a report required by Section 802.106 providing information to a member or annuitant of TRS, or (ii) a report required by the state auditor]; and (2) each proposed annual budget of TRS.

- TRS will no longer submit a statistical analysis of information regarding applications to withdraw accumulated contributions by persons who are absent from service (except by death or retirement) to various State entities.
- To the extent that UT institutions file annual reports under Section 2101.0115, Government Code, SB 59 will impact UT institutions by eliminating the requirement to include expenditures for recycled, remanufactured, or environmentally sensitive commodities or services.

**Effective:** September 1, 2013

Dana Hollingsworth

### **Law Enforcement and Security**

**[HB 48](#)** by Flynn, et al. and Patrick

Relating to the procedure under which a person may renew a license to carry a concealed handgun.

This bill changes the requirements that a Concealed Handgun License holder must satisfy to renew a CHL.

First, it removes the requirement that a CHL holder complete a handgun proficiency course before renewing a CHL.

Second, it allows a CHL holder to submit a renewal application by mail or Internet.

Last, it requires the Department of Public Safety to issue (and the applicant to sign and return) a form that explains Texas law on the use of deadly force and identifies the places where a CHL holder may not lawfully carry a concealed handgun.

**Impact:** Since numerous UT police officers hold CHLs, UT police departments should notify their officers of the changes.

**Effective:** September 1, 2013

Omar A. Syed

**[HB 124](#)** by Anderson, et al. and Campbell

Relating to the addition of Salvia Divinorum and its derivatives and extracts to Penalty Group 3 of the Texas Controlled Substances Act.

The bill adds Salvia Divinorum (including all its parts, whether growing or not, and its seeds and extracts) to Penalty Group 3 of the Controlled Substances Act. Salvia

Divinorum is a strong, naturally occurring plant that is a hallucinogen and a psychoactive substance.

**Impact:** The change makes it a crime to manufacture, deliver, possess or possess with the intent to deliver this substance. As such, UT police departments will need to inform officers of this new provision and, if necessary, provide them the training and materials needed to recognize it.

**Effective:** September 1, 2013

Omar A. Syed

[HB 705](#) by Howard, et al. and Schwertner

Relating to the definition of emergency services personnel for purposes of the enhanced penalty prescribed for an assault committed against a person providing services in that capacity.

HB 705 provides additional protection to emergency room personnel including volunteers by heightening the penalty for assault of emergency room personnel. The assault of emergency room personnel providing emergency services by a patient who knows an individual to be emergency room personnel is raised from a class A misdemeanor to a third degree felony.

**Impact:** UT System institutions employing physicians, residents, nurses, and other health care providers providing care in emergency room settings should be aware of the of the heightened protections for assault provided by HB 705.

**Effective:** September 1, 2013

Tim Boughal

[HB 912](#) by Gooden, et al. and Estes

Relating to images captured by unmanned aircraft and other images and recordings; providing penalties.

HB 912 would enact the Texas Privacy Act (the “Act”). It would define terms, specify exceptions to applicability, and provide for criminal penalties and civil action.

HB 912 defines “image” as any capturing of sound waves, thermal, infrared, ultraviolet, visible light, or other electromagnetic waves, odor, or other conditions existing on or about real property or an individual located on that property.

HB 912 is not applicable in the following circumstances:

- HB 912 does not apply to images of real property or an individual on real property captured by an unmanned vehicle or unmanned aircraft for purposes of professional or scholarly research and development on behalf of an institution of

higher education. This would include images taken by professors, employees, or students of the institution or people who were under contract with or otherwise acting under the direction or on behalf of the institution.

- HB 912 does not apply to airspace designated as a test site or range authorized by the Federal Aviation Administration for the purpose of integrating unmanned aircraft systems into the national airspace, or to an operation, exercise, or mission of any branch of the U.S. Military.
- HB 912 does not apply to images captured by or for an electric or natural gas utility for operations and maintenance of utility facilities for the purpose of maintaining utility system reliability and integrity; for inspecting utility facilities to determine repair, maintenance, or replacement needs during and after construction of such facilities; for assessing vegetation growth for the purpose of maintaining clearances on utility easements; and for utility facility routing and siting for the purpose of providing utility service.
- HB 912 does not apply to images captured with the consent of the individual who owns or lawfully occupies the real property captured in the image.
- HB 912 does not apply to images captured pursuant to a valid search or arrest warrant;
- HB 912 does not apply if the image is captured by a law enforcement authority or a person who is under contract with or otherwise acting under the direction or on behalf of a law enforcement authority: (A) in immediate pursuit of a person law enforcement officers have reasonable suspicion or probable cause to suspect has committed an offense, not including misdemeanors or offenses punishable by a fine only; (B) for the purpose of documenting a crime scene where an offense, not including misdemeanors or offenses punishable by a fine only, has been committed; (C) for the purpose of investigating the scene of a human fatality; a motor vehicle accident causing death or serious bodily injury to a person; or any motor vehicle accident on a state highway or federal interstate or highway; (D) in connection with the search for a missing person; (E) for the purpose of conducting a high-risk tactical operation that poses a threat to human life; or (F) of private property that is generally open to the public where the property owner consents to law enforcement public safety responsibilities.
- HB 912 does not apply if the image is captured by state or local law enforcement authorities, or a person who is under contract with or otherwise acting under the direction or on behalf of state authorities, for the purpose of: (A) surveying the scene of a catastrophe or other damage to determine whether a state of emergency should be declared; (B) preserving public safety, protecting property, or surveying damage or contamination during a lawfully declared state of emergency; or (C) conducting routine air quality sampling and monitoring, as provided by state or local law.

- HB 912 does not apply to an image captured at the scene of a spill, or a suspected spill, of hazardous materials.
- HB 912 does not apply to an image captured for the purpose of fire suppression.
- HB 912 does not apply to images captured for the purpose of rescuing a person whose life or well-being is in imminent danger.
- HB 912 does not apply if the image captured by a Texas licensed real estate broker in connection with the marketing, sale, or financing of real property, provided that no individual is identifiable in the image.
- HB 912 does not apply if an image is captured of real property or a person on real property that is within 25 miles of the United States border;
- HB 912 does not apply if an image is from a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception.
- HB 912 does not apply to an image of public real property or a person on that property;
- HB 912 does not apply if the image is captured by the owner or operator of an oil, gas, water, or other pipeline for the purpose of inspecting, maintaining, or repairing pipelines or other related facilities, and is captured without the intent to conduct surveillance on an individual or real property located in this state.
- HB 912 does not apply in connection with oil pipeline safety and rig protection.
- HB 912 does not apply in connection with port authority surveillance and security.

HB 912 provides for criminal penalties. Pursuant to HB 912, it would be a class C misdemeanor (maximum fine of \$500) to use or authorize the use of an unmanned aircraft to capture an image of an individual or real property with the intent to monitor or conduct surveillance on the individual or real property captured in the image. The term “intent” has the same meaning assigned by Section 6.03 of the Penal Code. It would be a defense to prosecution against this offense that the person destroyed the image as soon as he or she had knowledge that it was captured in violation of the bill, and without disclosing, displaying, or distributing it to a third party.

Pursuant to HB 912, it would also be it would be a Class C misdemeanor (maximum fine of \$500) to possess, display, disclose, distribute, or otherwise use an image captured in violation of the Act. Each image in violation of this offense would be a separate offense. It would be a defense to prosecution for possession if the person destroyed the image as soon as he or she had knowledge that it was captured in violation of the Act.

HB 912 also provides that it would be a Class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) for disclosure, display, distribution, or other use of an image. It would be a defense to disclosure, display, distribution, or other use if the person stopped disclosing, displaying, distributing, or otherwise using the image as soon as they had knowledge that it was captured in violation of the Act.

HB 912 further provides that images captured in violation of the Act, or an image captured by an unmanned aircraft that was incidental to the lawful capturing of an image:

- could not be used as evidence in any criminal or juvenile proceeding, civil action, or administrative proceeding;
- would not be subject to disclosure, inspection, or copying under the Public Information Act; and
- would not be subject to discovery, subpoena, or other legal compulsion for its release.

These images could be disclosed and used as evidence to prove a violation of the Act and would be subject to discovery, subpoena, or other legal compulsion for that purpose.

Finally, HB 912 provides for a civil right of action. Pursuant to the Act, an individual who was the subject of an image — or who owned or who was a tenant of privately owned real property that was the subject of an image — captured, possessed, disclosed, displayed, distributed, or otherwise used in violation of the bill could bring a civil action to enjoin a violation or imminent violation of the bill; and recover a civil penalty of:

- \$5,000 for all images captured in a single episode;
- \$10,000 for disclosure, display, distribution, or other use of any images captured in a single episode; or
- actual damages if the disclosure, display, or distribution of the image was done with malice.

Courts would be required to award court costs and reasonable attorney's fees to the prevailing party. Venue would be governed by the Civil Practice and Remedies Code. The statute of limitations would be two years from the date the image was captured or two years from the date the image was first possessed, displayed, distributed, or otherwise used in violation of the Act.

HB 912 requires that the Department of Public Safety adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in this state.

HB 912 requires that no earlier than January 1 and not later than January 15 of each odd-numbered year, each state law enforcement agency and each county or municipal law enforcement agency located in a county or municipality, as applicable, with a population greater than 150,000 that used or operated an unmanned aircraft during the preceding 24

months issue a written report to the governor, the lieutenant governor, and each member of the legislature and must retain the report for public viewing; and post the report on the law enforcement agency's publicly accessible website, if one exists.

The report must include: the number of times an unmanned aircraft was used, organized by date, time, location, and the types of incidents and types of justification for the use; the number of criminal investigations aided by the use of an unmanned aircraft and a description of how the unmanned aircraft aided each investigation; the number of times an unmanned aircraft was used for a law enforcement operation other than a criminal investigation, the dates and locations of those operations, and a description of how the unmanned aircraft aided each operation; the type of information collected on an individual, residence, property, or area that was not the subject of a law enforcement operation and the frequency of the collection of this information; and the total cost of acquiring, maintaining, repairing, and operating or otherwise using each unmanned aircraft for the preceding 24 months.

**Impact:** HB 912 has no direct impact on UT System institutions. However, to the extent police departments at each institution utilize unmanned aircrafts, each should be aware of this legislation and its possible impact as it relates to use of such technology.

**Effective:** September 1, 2013

Melissa V. Garcia

[HB 1043](#) by Lewis, et al. and Duncan

Relating to the offense of the unauthorized duplication of certain recordings.

Section 641.051 of the Business & Commerce Code establishes criminal penalties if a recording that was initially fixed before February 15, 1972 is reproduced or transferred with the intent to be sold or otherwise used for commercial advantage or private financial gain without the consent of the recording's owner. HB 1043 modifies Section 641.051 to provide that such penalties do not apply to persons engaged in radio or television broadcasting who transfers, or causes to be transferred, a recording:

intended for or in connection with a radio or TV broadcast, or  
for archival purposes.

**Impact:** Persons using and managing information systems at UT System and the UT institutions need to be aware of and ensure compliance with the changes HB 1043 makes to Section 641.051's statutory prohibitions on unauthorized recordings.

**Effective:** June 14, 2013

Scott Patterson

[HB 1272](#) by Thompson, et al. and Van de Putte

Relating to the continuation and duties of the Human Trafficking Prevention Task Force.

HB 1272 continues the Human Trafficking Prevention Task Force and requires it to work with the Texas Education Agency and the Health and Human Services Commission to develop a list of key indicators that a person is a victim of human trafficking and to develop a standardized training curriculum and train doctors, nurses, EMS personnel, teachers, school counselors and administrators in victim identification. The Department of Family and Protective Services and the Health and Human services Commission are also required to train their personnel in methods of identifying children in foster care who may be at risk for becoming victims of human trafficking and to develop a referral process for identified victims and individuals at risk of becoming victims.

**Impact:** UT System institutions’ doctors, nurses and EMS personnel are required to be trained in the standard curriculum on identifying victims of human trafficking. It is not clear whether “teachers, counselors and administrators” would include non-medical personnel for training purposes.

**Effective:** June 14, 2013

Allene Evans

[HB 1284](#) by Johnson, et al. and Huffman

Relating to the offense of making or causing a false alarm or report involving a public or private institution of higher education.

Under current law, a person commits an offense under Section 42.06, Texas Penal Code, if he knowingly initiates, communicates or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily: (1) cause action by an official or volunteer agency organized to deal with emergencies; (2) place a person in fear of imminent serious bodily injury; or (3) prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance. The offense under Section 42.06, Texas Penal Code, of making such a false alarm or report involving a public or private institution of higher education is a state jail felony. An individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail for any term of not more than two years or less than 180 days and, in addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed \$10,000.

This bill requires institutions of higher education to:

- notify all incoming students, as soon as practicable, of the penalty for the offense under Section 42.06, Texas Penal Code, of making a false alarm or report involving a public or private institution of higher education; and

- notify all enrolled students not later than October 1, 2013 of the penalty for the offense under Section 42.06, Texas Penal Code, of making a false alarm or report involving a public or private institution of higher education.

**Impact:** Each UT component institution must make the required notices in a timely manner. This requirement may necessitate changes to the institutions' catalogs.

**Effective:** June 14, 2013

Jack C. O'Donnell

[HB 1421](#) by Perry and Estes

Relating to the disposition of certain seized weapons.

Article 18.19 of the Texas Code of Criminal Procedure is amended to allow a law enforcement agency that has seized a weapon to obtain a court order to sell the weapon or have the weapon sold by an auctioneer and keep the net proceeds of the sale, in the following situations:

- There is no prosecution or conviction for an offense involving the weapon seized, and the person found in possession of the weapon has not timely requested its return; or
- A person either convicted or receiving deferred adjudication under Chapter 46, Texas Penal Code (a weapons violation), is not entitled to the weapon seized if:
  - the person has been previously convicted under Chapter 46, Penal Code;
  - the weapon is one defined as a prohibited weapon under Chapter 46, Penal Code;
  - the offense for which the person is convicted or receives deferred adjudication was committed in or on the premises of a playground, school, video arcade facility, or youth center, as those terms are defined by Section 481.134, Health and Safety Code; or
  - the court determines based on the prior criminal history of the defendant or based on the circumstances surrounding the commission of the offense that possession of the seized weapon would pose a threat to the community or one or more individuals; or
- If the person found in possession of a weapon is convicted of an offense involving the use of the weapon.

**Impact:** UT System Police and Institution Police need to be aware of their right to sell seized weapons in these situations.

**Effective:** September 1, 2013

Jack C. O'Donnell

**HB 1632** by Fletcher and Paxton

Relating to the confidentiality of certain identifying information of peace officers, county jailers, security officers, employees of the Texas Department of Criminal Justice or a prosecutor's office, or judges and their spouses.

This bill amends the Election Code so that the residence of an applicant is confidential and does not constitute public information per Chapter 552 of the Government Code if the applicant is an individual to whom Section 552.1175 of the Government Code applies. Section 552.1175 relates to the confidentiality of information relating to peace officers, county jailers, security officers, and employees of the Texas Department of Justice or a prosecutor's office.

In addition, in order for the residence of an applicant to whom Section 552.1175 applies or the residence of an applicant who is a federal or state judge or the spouse of one to be confidential, the applicant must: (a) include an affidavit with the registration or must provide one to the registrar describing the applicant's status, including an affidavit under Section 13.0021 or Section 15.0215 if the applicant is a federal or state judge or a spouse of one or (b) provide the registrar with a completed form approved by the secretary of state for the purpose of notifying the registrar of the applicant's status.

Section 552.1175 of the Government Code is also amended to include federal and state judges as being a category of individuals whose home address, telephone number, emergency contact information, social security number, and family member information is protected from disclosure under the provision. The provision is also expanded to include date of birth information as being confidential for the individuals to whom this provision applies.

**Impact:** The impact of this bill on UT System and its institutions is minimal but the bill makes date of birth information statutorily excepted from disclosure for employees who fall within the categories of individuals defined under Section 552.1175 of the Government Code. For all other employees of UT System and its institutions, date of birth information remains excepted from disclosure under a common law right to privacy.

**Effective:** June 14, 2013

Neera Chatterjee

[HB 1690](#) by Fletcher and Nelson

Relating to measures to prevent or control the entry into or spread in this state of certain communicable diseases; providing a penalty.

House Bill 1690 amends the Health and Safety Code to authorize a peace officer to use reasonable force to secure members of a group, a property, and/or a quarantine area subject to an order to implement communicable disease control measures. It also authorizes peace officers to prevent individuals from joining, entering, or leaving the group, property, or quarantine area, as applicable.

The bill also authorizes a judge or magistrate to issue an order allowing an officer to prevent a person under a protective custody order from leaving the facility in which he/she is detained if leaving would cause a public health threat.

The bill also permits such orders to direct officers and/or emergency medical service providers to transport a person subject to an order to a designated inpatient health facility or other suitable facility and authorizes providers to seek reimbursement for the costs of the transport.

The bill also authorizes a judge to order a person whose exposure to the public would jeopardize the health and safety of the public to prepare and appear for a hearing only by teleconference or other isolated means.

Finally, the bill makes it a Class A Misdemeanor for a person under such an order to resist or evade apprehension or transport by a peace officer or for any other person to assist a person under such an order in resisting or evading apprehension or transport.

**Impact:** The bill authorizes the UT System Police to secure, take into custody, or transport persons under such orders and creates a new criminal offense on which officers must be trained. UT System emergency medical service providers may also be required to transport such persons to designated inpatient health facilities. Finally, the bill may subject UT System police and emergency medical service providers to marginally higher risks of disease communication from having to transport and/or detain persons who have communicable diseases.

**Effective:** June 14, 2013

Omar Syed

[HB 1738](#) by Naishtat, et al. and Zaffirini

Relating to the emergency detention by a peace officer of a person who may have mental illness, including information provided to the person subject to detention and a standard form of notification of detention to be provided to a facility by a peace officer.

This bill amends sections 573.001, 573.002, 573.021(a), and 573.025 of the Texas Health & Safety Code concerning emergency detentions of mentally ill persons by a peace officer without a warrant.

- Section 573.001 requires the peace officer to immediately inform the person orally in simple, nontechnical terms of the reason for the detention and that a staff member of the facility will inform the person of the person's rights within 24 hours after the time the person is admitted to a facility.
- Section 573.002 requires a peace officer to immediately file a written notification of detention with the mental health facility to which the peace officer transported the individual.
- Section 573.002 contains a form that the peace officer is required to use for the notification of detention. Section 573.002(e) provides that a mental health facility or hospital emergency department may not require a peace officer to execute any form other than the form contained in section 573.002 as a predicate to accepting for temporary admission the detained person.
- Section 573.021(a) provides that a facility shall temporarily accept a person for whom a peace officer files a notification of detention.
- Section 573.025 adds to the list of rights of the detained person “a reasonable opportunity to communicate with a relative or other responsible person who has a proper interest in the person's welfare.”

**Impact:** UT System Police and Institution Police need to be aware of these specific requirements when taking a mentally ill person into custody. UT hospital emergency departments and any UT mental health facilities (as defined by section 571.003, Texas Health & Safety Code) need to be aware of the requirement to temporarily accept a person for whom a peace officer files a notification of detention, and the requirement that the detained person be informed of his rights within 24 hours after admission.

**Effective:** September 1, 2013

Jack C. O'Donnell

[HB 1951](#) by Thompson, Senfronia and Carona

Relating to the licensing and regulation of telecommunicators; providing a criminal penalty.

This bill authorizes the Texas Commission on Law Enforcement to more stringently regulate telecommunicators - commonly known as police dispatchers.

First, the bill requires the Commission to establish training standards for dispatchers.

Second, the bill allows the Commission to issue or revoke the license of dispatcher training schools, operate such schools by itself, and consult with other agencies as they develop appropriate training programs.

Third, the bill forbids an agency from employing a dispatcher unless the dispatcher holds a telecommunicator license issued by the Commission or agrees to obtain one within one year of hire (and then actually obtains one within that time).

Fourth, the bill requires an agency to notify the Commission no later than 30 days after it hires a dispatcher.

Fifth, if an agency hires a dispatcher more than 180 days after he/she last served as a dispatcher, the bill directs the agency to keep on file the dispatcher's new criminal history information and two completed fingerprint cards.

Sixth, the bill allows the Commission to issue a telecommunicator license to a person who submits an application, completes training, passes a required exam, and satisfies other applicable Commission rules.

Finally, the bill requires an employer to provide each dispatcher at least 20 hours of Commission-approved training within each two-year period.

**Impact:** UT institution police departments should review their job descriptions for dispatchers to ensure they conform to the changes in the law. The UT System Police also should monitor regulatory developments and advise UT institution police departments about developments, since the Commission will issue further rules on dispatchers by the end of 2013. Finally, UT institution police departments should determine if they must devote additional resources to training, especially if they do not already provide or pay for at least 20 hours of training for dispatchers every two years.

**Effective:** This Act takes effect January 1, 2014, except Section 12 takes effect September 1, 2013.

Omar A. Syed

[HB 2090](#) by Canales and Hinojosa

Relating to a written statement made by an accused as a result of custodial interrogation.

This bill amends the definition of a written statement of an accused in section 1, Article 38.22, Texas Code of Criminal Procedure. The new definition is: “(1) a statement made by the accused in his own handwriting; or (2) a statement made in a language the accused can read or understand that: (A) is signed by the accused; or (B) bears the mark of the accused, if the accused is unable to write and the mark is witnessed by a person other than a peace officer.”

**Impact:** UT System Police and Institution Police need to be aware of this new definition when taking a written statement of an accused.

**Effective:** September 1, 2013

Jack C. O'Donnell

[HB 2103](#) by Villarreal, et al. and Seliger

Relating to education research centers and the sharing of educational data between state agencies; redesignating certain fees as charges.

HB 2103 makes several changes to the oversight and operations of Education Research Centers (ERCs). The Coordinating Board is required to establish not more than three ECRs to conduct studies and evaluations using the data described in Section 1.005 of the Education Code. The Coordinating Board is required to solicit requests for proposals from appropriate institutions to establish each ERC and would evaluate those proposals based on criteria adopted by the coordinating board.

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

HB 2103 removes the commissioner of education from the direct oversight of ERCs and would remove the commissioner's power to require ERCs to perform particular studies. Any cooperating agency may request that an ERC conduct a study or evaluation if the agency provided sufficient funds to finance the study or evaluation.

**ERC use of shared student data.** HB 2103 provides that in conducting studies, an ERC could use student data and educator data, including FERPA protected confidential data, that the center collected from any of the following: Texas Education Agency, the Coordinating Board, Texas Workforce Commission, or any other agency or institution of higher education, school district, a provider of services to these institutions, or any entity explicitly named in an approved ERC research project.

ERCs are required to comply with applicable state and federal law on confidentiality of student information. ERCs are also required to provide researchers access to student data only through secure methods and would require researchers to sign confidentiality agreements. Finally, ERCs must conduct regular security audits and report the results to the Coordinating Board and an ERC research advisory board established by HB 2103 to review ERC studies or evaluation proposals.

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

HB 2103 also removes certain notification requirements to the governor, the Legislative Budget Board, and the educational institution hosting the ERC where the particular study was being undertaken.

**Student data storage.** HB 2103 requires that the Coordinating Board store the data shared with it by cooperating agencies in a repository called the “P-20/Workforce Data Repository.” The board must also store other data in the repository, including data from college admission tests and the National Student Clearinghouse. It would use appropriate data matching and confidentiality procedures as approved by the cooperating agencies.

**Data sharing agreements with other states.** HB 2013 also provides that the Coordinating Board may enter into data sharing agreements with local agencies or organizations that provide educational services or with other relevant organizations of another state. The Coordinating Board would give priority to those states that sent the most college students to Texas or that received the most college students from here. These agreements would be reviewed by the U.S. Department of Education.

**ERC research advisory board.** HB 2103 also establishes an ERC research advisory board to review ERC studies or evaluation proposals to ensure appropriate data use. Each study or evaluation conducted by an ERC would have to be approved in advance by majority vote of the advisory board. ERCs could submit proposals from another educational institution, a graduate student, a P-16 Council, or another researcher proposing research to benefit education in Texas. In determining whether to approve a proposed study, the advisory board would have to:

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

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

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

The board would meet at least quarterly. The advisory board would not be a governmental body and thus not subject to the Open Meetings Act or Open Records Act.

**Other provisions.** HB 2103 changes the funding method for ERCs from “fees” to “charges” that would be imposed for the use of a center’s research, resources, or facilities.

HB 2103 also defines “cooperating agencies” to mean TEA, the coordinating board, and TWC.

**Impact:** To the extent UT System academic institutions have Education Research Centers, each should be aware of the changes to the oversight and operations of Education Research Centers.

**Effective:** June 14, 2013

Melissa V. Garcia

**HB 3370** by Craddick and Patrick

Relating to the authority of certain retired peace officers and former reserve law enforcement officers to carry certain firearms.

This bill allows former reserve law enforcement officers who served in that capacity for at least 15 years with one or more state or local law enforcement agencies to apply for a license that allows expanded gun privileges and exempts them from the prohibitions of Penal Code Sections 46.02 and 46.03, which prohibits the carrying of firearms in certain circumstances.

The bill creates Government Code Section 411.1992 and outlines the process required for a former reserve law enforcement officer to acquire and maintain a license under the statute.

It also amends Occupations Code Section 1701.357 by adding former reserve law enforcement officers who served for at least 15 years and officers who separated from their agencies before 15 years but are qualified retired law enforcement officers to the list of eligible applicants for these licenses. It amends Section 1701.357 to reflect the requirements for acquiring these licenses.

The bill amends Penal Code Section 46.15 by adding qualified retired law enforcement officers and former reserve law enforcement officers to the categories of persons exempted from Section 46.02 and 46.03 of the Penal Code as long as the person holds a certificate of proficiency issued under Occupations Code Section 1701.357 and is carrying a photo identification that verifies the officer is a qualified retired law enforcement officer or former reserve law enforcement officer.

**Impact:** UT System Police and UT System Institutions should be aware of the added categories of persons permitted to carry firearms on campus and ensure policies and procedures take account of these additions. UT System Police administration may also be required to take part in the license application process for its retired officers.

**Effective:** September 1, 2013

Omar Syed

**SB 146** by Williams and Kolkhorst.

Relating to access by a public institution of higher education to the criminal history record information of certain persons seeking to reside in on-campus housing.

The bill amends Texas Government Code Section 411.0945 to allow UT System institutions to access the non-public criminal history database maintained by the Texas Department of Public Safety (DPS) for the purpose of screening applications for student campus housing.

Only the institution's chief of police or housing office would be allowed to access the records obtained from the data base. The records could only be used for the purpose of evaluating the individual's campus housing application and all records obtained to conduct the screening must be destroyed once they are no longer required. If a criminal background check results in adverse action, the student who is subject to the adverse action must be notified. A court order or the applicant's consent would be required before the records could be disclosed or shared with any other individuals.

The institution would have to destroy any records obtained from DPS as soon as practicable after the beginning of the academic term for which the application was submitted.

**Impact:** UT System institutions now have the option to conduct a criminal history record information search for persons seeking to reside in on-campus housing. UTS 124, the Systemwide policy dealing with criminal background checks and model student

criminal background check policies, are being reviewed to determine if amendments will be made to require a criminal background check for this group of individuals.

**Effective:** June 14, 2013

Barbara Holthaus

[SB 299](#) by Estes and Sheets, et al.

Relating to the intentional display of a handgun by a person licensed to carry a concealed handgun.

This bill narrows the situations in which a concealed handgun license holder will be found to have committed a handgun crime. It will no longer be a crime for a CHL holder to “fail to conceal” a handgun. Instead, it will be unlawful for a CHL holder to “display” a handgun, but only if that display occurs in public view of another person, in a public place, and in a manner that is calculated to cause alarm.

The bill also expands a CHL holder’s right to display a handgun in self-defense, in defense of others and in defense of property. Before the change, a CHL holder was permitted to display a handgun only in situations that justified the use of deadly force. Now, a CHL holder may also display a handgun in situations that justify any use of force.

**Impact:** Although CHL holders are not permitted to carry handguns on the premises of UT institutions, the UT System Police often responds to crimes and calls for assistance that occur off-campus. Accordingly, the UT System Police should train its officers to recognize the changes to this offense.

**Effective:** September 1, 2013

Omar A. Syed

[SB 545](#) by Hancock and Harper-Brown

Relating to the peace officers authorized to operate an authorized emergency service vehicle used to conduct a police escort.

This bill allows a peace officer to disregard parking/standing restrictions, red lights, stop signs and speed limits when using an emergency vehicle to respond to a traffic disruption, facilitate a funeral, or escort an oversized or hazardous load.

**Impact:** UT institution police departments should inform and train their officers about this change.

**Effective:** June 14, 2013

Omar A. Syed

[SB 646](#) by Deuell and Naishtat, et al.

Relating to court-ordered outpatient mental health services.

SB 646 amends the Health and Safety Code provisions relating to court-ordered mental health services by specifying applicable procedures and clarifying that courts may order medication compliance but may not sanction patients for non-compliance.

The program of treatment must include care coordination services and any other services or treatment a treating physician considers clinically appropriate to treat the patient's mental illness and assist the patient in functioning safely in the community.

A court that receives information that a patient is not complying with the court-ordered program may set a modification hearing or issue an order for temporary detention. Patient failure to comply is not grounds for punishment for contempt.

An application for Order for Temporary Detention or Apprehension and Release Under Temporary Detention Order must detail the reasons the patient meets the criteria for court-ordered inpatient mental health services prescribed for temporary mental health services or extended mental health services.

A facility administrator shall immediately release a patient held under a temporary detention order if at any time during the detention the examining physician determines that the patient does not meet the criteria for court-ordered inpatient mental health services.

A person may not administer a psychoactive medication to a patient under court-ordered inpatient mental health services who refuses to take medication voluntarily unless certain exceptions apply, including that the patient is having a medication-related emergency.

Not later than December 1, 2016, the agency must report on court-ordered outpatient mental health services and their effectiveness to the legislature.

**Impact:** To the extent that some UT System health institutions and providers provide court-ordered mental health services there may be an effect on care plans and procedures.

**Effective:** September 1, 2013

Allene Evans

[SB 742](#) by Carona and Frullo

Relating to reports of missing children, missing persons, or attempted child abductions and to education and training for peace officers regarding missing or exploited children.

This bill amends Chapter 63 (Missing Children and Missing Persons), Texas Code of Criminal Procedure and Section 1701.402, Occupations Code. Article 63.009 (a-1) to

require that a local law enforcement agency, on receiving a report of an attempted child abduction, shall immediately, but not later than eight hours after receiving the report, provide any relevant information regarding the attempted child abduction to the Missing Children and Missing Persons Information Clearinghouse in the Department of Public Safety.

Article 63.0041 requires that a law enforcement officer or local law enforcement agency reporting an attempted child abduction to the Clearinghouse shall make the report by use of the Texas Law Enforcement Telecommunications System or a successor system of telecommunication used by law enforcement agencies and operated by the Department of Public Safety.

Article 63.0091 requires a local law enforcement agency to report a missing child as “endangered” if the missing child

- 1) had been reported missing on four or more occasions in the 24-month period preceding the date of the current report; or
- 2) is in foster care or in the conservatorship of the Department of Family and Protective Services and had been reported missing on two or more occasions in the 24-month period preceding the date of the current report.

Article 63.013 provides that each law enforcement agency shall provide to the Clearinghouse any information regarding an attempted child abduction that has been reported to the agency or that the agency has received from any person or another agency.

Section 1701.402, Occupations Code, provides that as a requirement for an intermediate or advanced proficiency certificate issued by the Texas Commission on Law Enforcement Officer Standards and Education on or after January 1, 2015, an officer must complete an education and training program on missing and exploited children.

**Impact:** UT System Police and Institution Police need to be aware of these specific requirements when receiving reports of missing children or an attempted child abduction. The change in law made by this Act in adding Article 63.0091, Code of Criminal Procedure, applies to a missing child report that is received by a law enforcement agency on or after January 1, 2014. The change in law made by this Act in adding Subsection (a-1), Article 63.009, Code of Criminal Procedure, and amending Article 63.013, Code of Criminal Procedure, applies to an attempted child abduction that is reported to a law enforcement agency on or after January 1, 2014.

**Effective:** September 1, 2013

Jack C. O'Donnell

[SB 939](#) by West and Parker, et al.

Relating to reporting child abuse and neglect and to training regarding recognizing and reporting child abuse and neglect at schools, institutions of higher education, and other entities.

Regarding institutions of higher education, SB 939 amends Chapter 51 of the Education Code by adding Section 51.976 which requires a child abuse reporting policy and employee training. SB 939 requires each institution of higher education to adopt a policy governing the reporting of child abuse and neglect as required by Chapter 261 of the Family Code (*e.g.*, requiring reporting to state or local law enforcement authority; Texas Department of Family and Protective Services; state agency that operates/licenses the facility where alleged neglect or abuse occurred).

SB 939 also requires that each institution of higher education provide training for employees who are professionals in recognizing and preventing sexual abuse and other maltreatment of children and responsible for reporting such suspected occurrences. Professionals are those as defined by Section 261.101 of the Family Code, which means an individual who is licensed or certified by the state or who is an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The Family Code further defines “professionals” as teachers, nurses, doctors, day-care employees, and employees of a clinic or health care facility that provides reproductive services

SB 939 states that the required training must include:

- techniques for reducing a child's risk of sexual abuse or other maltreatment;
- factors indicating a child is at risk for sexual abuse or other maltreatment;
- the warning signs and symptoms associated with sexual abuse or other maltreatment and recognition of those signs and symptoms; and
- Family Code reporting requirements and procedures.

Finally, SB 939 amends Section 42.0426 of the Human Resources Code (which relates, in pertinent part, to the training of personnel at a child care facility in recognizing symptoms of child abuse, neglect, and sexual molestation and reporting requirements) by requiring that a licensed facility require each employee who attends a training program to sign a statement verifying attendance—which must be maintained in the employee’s personnel file.

**Impact:** This bill impacts UT System institutions by requiring additional training for any professionals subject to this bill. This bill also impacts those UT System institutions that operate a licensed child-care facility.

**Effective:** September 1, 2013

Melissa V. Garcia

**SB 965** by Williams and Bohac

Relating to the correction of employment termination reports for law enforcement officers.

Under existing law, a peace officer is entitled to challenge the stated reasons for his/her termination in a hearing before an administrative law judge. If the officer prevails at the hearing, the judge may order the officer's law enforcement agency to revise the employment termination report it submitted; the form is commonly known as an F-5 form.

Under this bill, if the officer prevails in the hearing, the judge must order the Commission (rather than the law enforcement agency) to revise the F-5 form. The Commission must then send the revised F-5 form to the law enforcement agency, which must replace the original F-5 with the revised F-5.

**Impact:** If any F-5s are issued and later invalidated for UT System Police officers after a hearing, the UT System Police should replace the officer's original F-5 with the revised version issued by the Commission, and should review the applicable records retention schedule to determine when and how to dispose of the original form.

**Effective:** September 1, 2013

Omar A. Syed

**SB 1010** by Taylor and Bonnen

Relating to access to certain facilities by search and rescue dogs and their handlers; providing a criminal penalty.

Pursuant to SB 1010, a public facility, as defined by Section 121.002 (5) of the Human Resource Code (which includes a college dormitory or other education facility), may not deny a search and rescue handler (who is present with a dog) or a search and rescue dog admittance to the facility. Discrimination is prohibited against a search and rescue dog or its handler to use or be admitted to the facility. More specifically, discrimination prohibited includes:

- refusing to allow a search and rescue dog or the dog's handler to use or be admitted to public facility;
- a ruse or subterfuge calculated to prevent or discourage a search and rescue dog or the dog's handler from using or being admitted to a public facility; or

- failing to make a reasonable accommodation in a policy, practice, or procedure to allow a search and rescue dog or the dog's handler to be admitted to a public facility.

SB 1010 also states that a policy relating to the use of a public facility by a designated class of persons from the general public may not prohibit the use of the particular public facility by a search and rescue dog or the dog's handler. SB 1010 further provides that a search and rescue dog's handler is entitled to full and equal access, in the same manner as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to any condition or limitation established by law that applies to all persons, except that the handler may not be required to pay an extra fee or charge or security deposit for the search and rescue dog.

SB 1010 creates a criminal penalty for violations—a misdemeanor punishable by a fine of not less than \$300 or more than \$1,000. However, it is a defense to prosecution that the actor requested the search and rescue dog handler's credentials and the handler failed to provide the actor with credentials. Specifically, SB 1010 allows for a person to ask the handler for credentials proving the handler is a peace officer, firefighter, or certified member of the National Association for Search and Rescue or other state or nationally recognized search and rescue agency.

SB 1010 requires dog handlers to keep a dog properly harnessed or leashed. SB 1010 also creates a civil right of action against a dog handler for personal injury, property damage or death resulting from the failure of a dog handler to properly harness or leash the dog under the same law applicable to other causes brought for the redress of injuries caused by animals. The handler of a dog is also liable for any property damage to a public facility or to a housing accommodation.

SB 1010 provides that a governmental unit, as defined by Section 101.001, Civil Practice and Remedies Code, is subject to liability under this section only as provided by Chapter 101, Civil Practice and Remedies Code. A public servant, as defined by Section 108.001, Civil Practice and Remedies Code, is subject to liability under this section only as provided by Chapter 108, Civil Practice and Remedies Code.

**Impact:** SB 1010 impacts UT System institutions because it would require employees to allow admittance to a search and rescue handler dog to its facilities. Because of criminal and civil liability created by SB 1010, UT System institutions may wish to evaluate the need for training employees on the subject matter of this bill. To the extent any employees within the police department of the UT System institutions are search and rescue dog handlers, this bill would create personal liability (subject to limitations of liability for public servants) provided for personal injury, property damage or death resulting from the failure of the dog handler to properly harness or leash a dog. Therefore, UT System institutions may want to evaluate the need for training or additional training related to the proper handling of search and rescue dogs. Finally, UT System institutions may also wish to consider the costs and expenses, including but not limited to training costs and expenses, associated with this bill.

**Effective:** September 1, 2013

Melissa V. Garcia

**SB 1061** by Van de Putte and Menéndez

Relating to parking privileges of disabled veterans on the property of institutions of higher education.

SB 1061 allows a disabled veteran of the United States armed forces to be parked for an unlimited period in a parking space or area that is designated specifically for persons with physical disabilities on the property of an institution of higher education regardless of whether a permit is generally required for the use of the space or area. An institution of higher education may require a vehicle with such parking privilege to display a parking permit issued by the institution specifically for the purpose of implementing this subsection, but may not charge a fee for the permit. SB 1061 does not entitle a person to park a vehicle in a parking space or area that has not been designated specifically for persons with physical disabilities on the property of the institution if the vehicle has not been granted or assigned a parking permit required by the institution.

The parking privileges allowed by SB 1061 do not apply to a parking space or area located in:

- a controlled access parking facility if at least 50 percent of the number of parking spaces or areas designated specifically for persons with physical disabilities on the property of the institution of higher education are located outside a controlled access parking facility;
- an area temporarily designated for special event parking; or
- an area where parking is temporarily prohibited for health or safety concerns.

**Impact:** UT System institutions should be aware of this bill and be prepared to comply with the parking privileges provided to disabled veterans. Compliance with SB 1061 may also require additional training to the parking services department and/or police department at each UT System institution.

**Effective:** June 14, 2013

Melissa V. Garcia

**SB 1189** by Huffman and Fletcher

Relating to the disposition of certain firearms seized by a law enforcement agency.

SB 1189 amends Chapter 573.001 of the Health and Safety Code by specifically authorizing peace officers to immediately seize any firearm found in possession of a

person who is in a mental health crisis, is determined to be a danger to self or others, and is being detained and transported for an emergency health evaluation.

Additionally, SB 1189 adds Article 18.191 to the Code of Criminal Procedure to provide law enforcement with the necessary time to conduct follow-up investigations of the person taken for an emergency evaluation to determine whether the case was dismissed or the person was court ordered into inpatient psychiatric treatment. Specifically, SB 1189 requires the following:

- A law enforcement officer who seizes a firearm from a person taken into custody who is in a mental health crisis must immediately provide the person a written copy of the receipt for the firearm and a written notice of the procedure for the return of the firearm.
- The law enforcement agency holding a firearm must provide written notice of the procedure for the return of a firearm to the last known address of the person's closest immediate family member as identified by the person or reasonably identifiable by the law enforcement agency, sent by certified mail no later than 15 days after the date the person was taken into custody.
- The law enforcement agency holding the firearm must contact the court in the county that has jurisdiction to order commitment and request the disposition of the case no later than the 30<sup>th</sup> day after the date the firearm was seized. No later than the 30<sup>th</sup> day after the date of this request, the clerk of the court shall advise the requesting agency whether the person taken into custody was released or ordered to receive inpatient mental health services.
- No later than the 30<sup>th</sup> day after the date the clerk informs the enforcement agency that the person was released, the law enforcement agency must conduct a check of state and national criminal history record information to verify whether the person may lawfully possess a firearm and provide written notice to the person by certified mail if the firearm may be returned.
- No later than the 30<sup>th</sup> day after the date the clerk informs the enforcement agency that the person was ordered to receive inpatient mental health, the law enforcement agency is required to provide written notice by certified mail that the person is prohibited from owning, possessing, or purchasing a firearm and is authorized to petition the court that entered the commitment order for relief from the firearms disability.
- A person who is prohibited from owning or possessing a gun may dispose of the firearm by releasing it to a designee if the designee can lawfully possess a firearm, provides the law enforcement agency a copy of a notarized statement releasing the firearm to the designee, and provides an affidavit confirming the designee will not allow access to the firearm by the person who was taken into custody.

- If a firearm is wholly or partly owned by a person other than the person taken into custody, the firearm will be released to the person claiming right after providing an affidavit confirming the person wholly or partly owns the firearm and acknowledges the responsibility of the person to verify whether the person who was taken into custody has reestablished his or her eligibility to lawfully possess a firearm.

**Impact:** All University of Texas police departments should be aware of the requirement of conducting a follow-up investigation and the proper procedure for law enforcement agencies to return the firearm to the owner or other potential party.

**Effective:** September 1, 2013

Omar Syed

**SB 1191** by Davis and Thompson, Senfronia

Relating to the duties of health care facilities, health care providers, and the Department of State Health Services with respect to care provided to a sexual assault survivor in an emergency department of a health care facility.

This bill establishes requirements for services to a sexual assault survivor that apply to a health care facility that has an emergency department, including a general or special hospital owned by the state.

For those health care facilities that are not designated in a community-wide plan as the primary health care facility for treating sexual assault survivors, the facility is required to: 1) inform a sexual assault survivor that they are not the designated community facility for treating sexual assault survivors and to provide the name and located of the designated facility; and 2) inform the survivor that they are entitled to receive mandated care at the designated facility or to be stabilized and transferred to the designated facility. If the survivor chooses to be transferred, the facility must, after obtaining the written signed consent to the transfer, stabilize and transfer the survivor to the designated facility.

Current law requires that a health care facility providing services to a sexual assault survivor must provide, among other things, a forensic medical examination if requested by a law enforcement agency. Under this bill, a forensic examination on a sexual assault survivor can only be performed by a person with basic forensic collection training.

Each health care facility with an emergency department that is not the designated facility for treating sexual assault survivors must develop a plan to train personnel on sexual assault forensic evidence collection. Forensic evidence collection training approved for continuing education by the nursing or physician licensing boards satisfies the training requirement.

**Impact:** Each UT health care facility should assess the applicability of this statute to its facility. If applicable, UT facilities may be required to develop a plan to train

personnel on sexual assault forensic evidence collection. Personnel should be advised of the necessity of basic training for those treating sexual assault survivors.

**Effective:** September 1, 2013

Melodie Krane

[SB 1512](#) by Ellis and Vo

Relating to the confidentiality of certain crime scene photographs and video recordings.

SB 1512 amends the Government Code to make confidential a sensitive crime scene image, as defined by the bill's provisions, in the custody of a governmental body, regardless of the date that the image was taken or recorded, and to except such an image from disclosure under the Texas Public Information Act ("TPIA").

SB 1512 prohibits a governmental body from permitting a person to view or copy the sensitive crime scene image unless the person is one of the following:

- the deceased person's next of kin;
- a person authorized in writing by the deceased person's next of kin;
- a person being prosecuted for the death of the deceased person or convicted of an offense related to the death and appealing the conviction, or that defendant's attorney;
- a person who establishes an interest in a sensitive crime scene image that is based on, connected with, or in support of the creation of an expressive work, as defined by the bill's provisions;
- a person performing bona fide research sponsored by a public or private institution of higher education with approval of a supervisor of the research or a supervising faculty member;
- a state agency;
- an agency of the federal government; or
- a local governmental entity.

Governmental bodies can still seek to withhold a sensitive crime scene image from a person authorized to view the image on the grounds that the image is excepted from disclosure under the TPIA or other law.

If a governmental body receives a request for a sensitive crime scene image from a person who establishes an interest in the image that is based on an expressive work or who is performing bona fide research sponsored by an institution of higher education, SB

1512 requires the governmental body to notify the deceased person's next of kin of the request in writing, not later than the 10th business day after the request was received.

SB 1512 requires a governmental body to allow an authorized person to view or copy the requested image not later than the 10th business day after the date the governmental body receives the request, unless the governmental body files a request for an Attorney General opinion regarding whether the information is excepted from disclosure under the TPIA or other law.

**Impact:** Public Information Coordinators at UT System and its institutions should be aware of this new provision, particularly the list of persons authorized to view the sensitive crime scene images. In addition to the standard deadlines and notice requirements imposed by the TPIA, for requests that involve sensitive crime scene images, Public Information Coordinators should also be aware of the new statutory obligations to notify a deceased person's next of kin in certain specified circumstances.

**Effective:** September 1, 2013

Zeena Angadicheril

[SB 1907](#) by Hegar and Kleinschmidt, et al.

Relating to the transportation and storage of firearms and ammunition by concealed handgun license holders in private vehicles on the campuses of certain institutions of higher education.

This bill forbids an institution of higher education from adopting or enforcing any rule, regulation or provision, posting notices, or taking any other action meant to prohibit or place restrictions on the lawful storage or transportation in private motor vehicles of firearms or ammunition by Concealed Handgun License holders on the streets, driveways, parking lots, parking garages, or other parking areas located on the campus of the institution.

**Impact:** UT System institutions will no longer be able to prevent students or others who hold Concealed Handgun Licenses from lawfully storing or transporting firearms or ammunition in their private vehicles on institution campuses. UT System police policies and procedures will need to be updated to reflect this change, and other policies and procedures may need to be established to address any issues or concerns created by this change.

**Effective:** September 1, 2013

Omar Syed

## Civil Liability and Legal Services

[HB 581](#) by Howard, et al. and Lucio

Relating to the waiver of sovereign immunity in certain employment lawsuits by nurses.

By waiving sovereign immunity from suit and liability for hospitals operated by or on behalf of a state or local governmental entity, this bill would permit publicly employed nurses to bring a lawsuit in state court for damages for retaliation for certain advocacy actions, including making a good faith report regarding patient care concerns, requesting a nursing peer review, refusing to engage in certain conduct or advising a nurse of their rights under the law.

In order to bring such a suit relating to patient care concerns, the nurse must:

- make the report in writing (including electronically) or verbally, if authorized by the employer or entity where the nurse practices;
- make the report to the nurse's supervisor, a committee authorized under state or federal law to receive this report or to an individual or committee authorized by the nurse's employer or another entity where the nurse practices; and
- make the report not later than the 5<sup>th</sup> day after the nurse became aware of the situation if it is a single incident or the 5<sup>th</sup> day after the nurse became aware of the most recent occurrence if the situation involves multiple incidents or a pattern of behavior.

A lawsuit against a state governmental entity shall be in Travis County district court or a county in which all or part of the acts or omissions giving rise to the cause of action occurred. For local governmental entities, suit must be brought in a district court in a county in which all or part of the entity is located.

Provisions of the state whistleblower statute are made applicable with regard to the type of relief available and amount of damages available, time in which relief must be sought and the requirement of using the grievance or appeal procedures before suing.

The relief granted by the bill is in addition to other state or federal law remedies available to a public employee.

**Impact:** Since this bill applies to state and local hospitals, including both general and special hospitals, and mental hospitals, the provisions of this bill will apply to UT hospitals and institutions that employ nurses.

**Effective:** September 1, 2013

Melodie Krane

[HB 586](#) by Workman, et al. and Deuell

Relating to the waiver of sovereign immunity for certain design and construction claims arising under written contracts with state agencies.

HB 586 waives sovereign immunity to suit for state agencies, including institutions of higher education, for the purpose of adjudicating a claim for breach of a written contract executed after September 1, 2013, for engineering, architectural, or construction services or for materials related to engineering, architectural, or construction services in which the amount in controversy is not less than \$250,000, excluding penalties, costs, expenses, prejudgment interest and attorney fees. The total amount of money that can be awarded is limited by: (1) the balance due and owed by the state agency under the contract; (2) the amount owed for written change orders; (3) reasonable and necessary attorney fees if attorney fees are available to all parties in the contract; and (4) interest at the rate specified by the contract or if unspecified, the rate for post-judgment interest under the Finance Code, but not to exceed 10%. Damages may not include consequential or exemplary damages and damages for unabsorbed home office overhead. Judgments may not be paid from funds appropriated to the state agency from general revenue unless specifically appropriated for that purpose; further, state property will not be subject to seizure, attachment, or garnishment or any other remedy to satisfy a judgment. Before January 1 of each even numbered year, each state agency shall report to the governor, the comptroller, and each house of the legislature the cost of defense to the institution and the Attorney General in an adjudication brought against the agency; the report shall include the amount claimed in any adjudication pending on the date of the report.

**Impact:** This bill allows contractors to bring suit against the university without obtaining legislative consent for breach of engineering, architectural, or construction contracts executed after September 1, 2013 with damages of \$250,000 or more. A party seeking to enforce a university contract through litigation will be limited to recovering actual damages as specified in the bill, attorney fees if such fees are available to all parties in the contract, and interest at the rate specified in the contract. Construction/engineering/architectural contract templates should be reviewed for any needed modifications resulting from this legislation prior to its effective date. The bill also includes required reporting by the institution for such litigation.

**Effective:** September 1, 2013

Helen Bright

[HB 1728](#) by Ashby and Seliger

Relating to the use of an unsworn declaration, the disposition of certain court exhibits, and the seal of a constitutional county court or county clerk.

Under HB 1728, liens and other records affecting real or personal property that are filed with the county clerk cannot be authenticated with an unsworn declaration. The bill allows clerks to dispose of certain exhibits in criminal cases a year after acquittal or death of defendant. Clerks of constitutional county courts may affix signatures or seals

electronically, as long as the signature or seal cannot be altered. Generally, county clerks will be allowed to authenticate their acts by affixing their seal using any means, including electronic means, that accurately reproduce the seal.

**Impact:** HB 1728 could make filing documents in the official county records easier. Notify those who file deeds and other documents in the official county records, such as the System and institutional legal offices, and the System Real Estate Office and institutional real estate offices.

**Effective:** June 14, 2013

Traci L. Cotton

[HB 2302](#) by Hunter, et al. and West

Relating to signing electronic or digital court documents, to the electronic filing system established by the Texas Supreme Court, to the statewide electronic filing system fund, to certain court fees and court costs, and to recovery of electronic filing fees by taxing units; imposing and authorizing certain fees.

This bill validates electronic signatures by a judge. The bill requires the various civil court clerks to collect between a \$10-\$20 additional fee when an action/proceeding or appeal, already requiring the payment of a fee, is filed (i.e. original petitions, interpleaders, etc.). Criminal defendants in district or county court are required to pay an additional \$5 fee if convicted. Fees will be forwarded to the comptroller, and deposited in the newly established electronic filing system (general revenue) fund, earmarked primarily for the development of statewide electronic filing technology. Corresponding changes are made to Government Code to reflect the clerks' obligations to collect the new fee.

Courts using the electronic filing system established by the Supreme Court may charge a \$2 fee per filing if the fee is approved and necessary to recover actual system costs, but this fee can only be assessed through September 1, 2019. Governmental entities not otherwise required to pay filing fees are not required to pay the \$2 fee. The fee will apply to criminal offenses committed on or after September 1, 2013, and to actions or appeals, already requiring fees, filed after September 1, 2013.

**Impact:** UT System and its component institutions will be required to pay the additional fee to the extent they file the affected actions or appeals, which will in turn increase the cost of doing business. If the funds will truly be used to establish a consistent electronic document filing process, this will benefit UT System and its institutions if use of the process is *ultimately* free of charge, as document filing will be more efficient and postage costs will be avoided. The \$10-\$20 fee should be recoverable from a defendant as court costs; it is unclear whether the \$2 fee can be recovered from a defendant as court costs. Employees who file these actions/appeals on behalf of UT System and its institutions (i.e. Office of General Counsel) should be notified.

**Effective:** September 1, 2013

Traci L. Cotton

**SB 679** by Duncan and Hughes

Relating to certain records and supporting affidavits filed as evidence in certain actions.

SB 679 affects medical record affidavits used to prove reasonableness and necessity of medical charges. The bill eliminates the requirement that the records attached to the affidavit also be filed with the court *before* trial begins. The bill requires that the affidavit include the amount already paid and still owed for the medical services provided and makes other non-substantive changes to the prescribed form of the affidavit. The Texas Supreme Court would be required to make conforming amendments to the Rules of Evidence. Changes made by the bill apply to actions filed on or after September 1, 2013.

**Impact:** The new form of affidavit should be sent to medical records custodians who prepare and sign these affidavits at System institutions. System and institutional attorneys would also need to be notified of the change in form as well as the elimination of the requirement that the attached records be filed with court *prior* to trial.

**Effective:** September 1, 2013

Traci L. Cotton

**SB 1891** by Watson and Howard

Relating to the imposition of an additional fee for filing civil cases in certain Travis County courts.

Under SB 1891, the Travis County district courts, probate courts, and county courts at law must collect an additional filing fee of not more than \$15 for each civil case filed in these courts. The fee will be used for the construction, renovation, or improvement of the Travis County civil court facilities. The county commissioners' court must adopt specified resolutions in order to assess the fee, beginning October 1 of the given year, with the fees potentially continuing through October 1, 2028.

**Impact:** UT System institutions will be impacted in that the cost of litigating in these courts will increase by \$15 per case filed if the commissioners' court acts. Although these costs can be recovered from the defendant, in reality these court costs are not always recouped. In the end, the UT institutions will incur additional cost to litigate matters in Travis County. The Chief Business Officers, the student accounting/financial aid/loan offices and OGC attorneys should be alerted to the fee increase.

**Effective:** June 14, 2013

Traci L. Cotton

[SCR 30](#) by Uresti and Nevarez

Granting permission to the State of Texas to sue The University of Texas System.

This resolution is filed on behalf the permanent school fund by and through Jerry Patterson, commissioner of the General Land Office and chairman of the School Land Board, to obtain legislative permission to sue the Board of Regents of The University of Texas System in a real estate boundary dispute. Patterson contends that the boundary approved by the General Land Office (GLO) is erroneous, that the land in conflict is subject to lease for oil and gas exploration, and that any attempt by the board to lease the tracts could wrongfully include 157 acres of permanent school fund minerals. This resolution gives Patterson permission to sue the Board of Regents for declaratory relief under the Uniform Declaratory Judgment Act (UDJA). The resolution provides that the legislature takes no position in this dispute and that Patterson cannot seek recovery of monetary damages, but is limited to seeking a determination of the boundary and a court order that fixes and determines the true boundary. According to the resolution, the suit may be brought in Travis County and process is to be served on the secretary to the board of regents in accordance with law.

**Impact:** Passage of this resolution impacts UT System as it subjects the University to further litigation about the boundary. A lawsuit pertaining to the boundary was filed against the Board of Regents in 2009 by the Stroman Ranch in Pecos County to which the university responded with a venue challenge and a plea to the jurisdiction, but legislative permission to sue was never achieved. Although Patterson is limited to declaratory relief and cannot seek damages when he sues, UT System must bear defense litigation costs to a lawsuit that may be brought in Pecos County and is potentially subject to attorney fees and costs.

**Effective:** June 14, 2013

Helen Bright

### Sunset Bills

[HB 1675](#) by Bonnen, Dennis and Nichols

Relating to the sunset review process and certain governmental entities subject to that process.

HB 1675 is the omnibus Sunset bill dealing with a number of agencies and their continuation. Of interest to UT System, the Texas Education Agency is continued until 9/1/2015, including a required review of the TEA contracting procedures for assessment instruments. University Interscholastic League is subject to Sunset review (but not abolition) during the upcoming interim. Regional Education Services Centers are given a Sunset date of 9/1/2019 (from 2015) as is the Texas Windstorm Insurance Association. The bill also assures greater access for Sunset Commission staff to confidential and

privileged information held by agencies, as well as the ability to attend closed agency meetings.

**Impact:** UT Austin will need to prepare for the Sunset review of the University Interscholastic League during the upcoming year and a half. This may require significant staff time to respond to requests for information and documents. UIL is required to bear the costs of the Sunset review.

**Effective:** This Act takes effect immediately, except Sections 2.04 and 5.01 have no effect.

Jim Phillips

[SB 215](#) by Birdwell, et al. and Anchia

Relating to the continuation and functions of the Texas Higher Education Coordinating Board, including related changes to the status and functions of the Texas Guaranteed Student Loan Corporation.

SB 215 makes numerous changes to the Texas Higher Education Coordinating Board (THECB) functions and programs that include the following relevant to university systems and institutions of higher education:

- The bill redefines the Board's powers and duties to reflect the major functions of a higher education coordinating entity and provides that the THECB has only the powers provided by law, reserving the governance of institutions to their governing boards. The bill adds the requirement for the THECB to develop a long-range master plan that will require the board to re-evaluate the role and mission of each general academic teaching institution. The role of the THECB in establishing best practices and pilot programs is redefined and provides limitations when establishing such programs. The bill requires the THECB to administer a pilot program at selected institutions no later than January 1, 2014 to ensure that students are informed consumers with regard to student financial aid.
- SB 215 requires the Board to establish a policy on an agency-wide risk-based compliance monitoring function for ensuring: (1) that funds allocated by the THECB to the institution are distributed in accordance with law and rule; and (2) that data reported by institutions to the THECB and used for funding or policymaking decisions is correct. Factors in developing the policy and provisions on conducting the review (ex: partnering with institution's audit department; announced or un-announced visits) are included in the bill, as are notification procedures when the THECB determines through the compliance monitoring process that funds were misused or misallocated by an institution, or if there were errors in formula funding. Any final determination is reported to the institution's governing board and in determinations of formula funding errors, revisions to the appropriated amount would be calculated and reported to the governor, LBB, and comptroller.

- SB 215 requires the THECB to engage in negotiated rulemaking with university systems and institutions to identify unnecessary requests for information to eliminate them or ways to streamline the requests. The THECB is also required to engage affected institutions in negotiated rulemaking processes when adopting a policy, procedure, or rule relating to admissions policies, the allocation or distribution of funds (including financial aid or other trusted programs), certain data requests, its new compliance monitoring function, and standards to guide the board's review of new construction and the repair and rehabilitation of buildings and facilities. The THECB is also to establish methods for obtaining input from stakeholders and the general public when developing the long range master plan, implement policies to provide opportunities for public comment at each board meeting, and adopt policies for forming advisory committees.
- The bill amends the process for THECB approval of new degrees or certificate programs and provides new criteria used for the program review. The bill includes new provisions pertaining to consolidation or elimination of degree or certificate programs and allowing off-campus courses for credit within the state or distance learning courses.
- The bill changes the THECB responsibility in reviewing and approving new construction and repair and rehabilitation projects, limiting their duties and requiring the THECB to adopt standards to guide their review.
- SB 215 amends various provisions within the TEXAS Grant program, limiting eligibility to those students enrolled in a baccalaureate degree program and removing 2-year colleges from eligibility for TEXAS grant funding. The bill also requires the THECB to allocate the TEXAS grant funding "proportionally" among the remaining eligible institutions.
- SB 215 amends provisions within the Texas B-On-Time program. The changes limit the program to students earning baccalaureate degrees and limits eligibility to general academic teaching institutions except for state colleges, medical and dental units offering baccalaureate degrees, or private or independent institutions of higher education that offer baccalaureate degree programs. The bill also requires that the THECB, in collaboration with eligible entities, adopt and implement measures to improve participation in the program and improve the rate of student satisfaction of the program terms. Institutions with a loan forgiveness rate of less than 50% statewide or whose default exceeds the statewide average will be required to give training to all loan recipients enrolled at their institution.
- As to student loans, the bill converts the Texas Guaranteed Student Loan Corporation from a public nonprofit corporation to a nonprofit corporation under Chapter 22 of the Business Organization Code. The bill also changes the venue to Travis County in default suits for student loans authorized by Education Code Chapter 52.

- The bill amends various provisions within the Norman Hackerman Advanced Research Program, including administration of the program by the THECB. The Research University Development Fund provisions have also been modified: the bill changes the name of the fund to the Texas Competitive Knowledge Fund and changes the eligibility factors and funding.
- This bill requires that additional information and certification be provided by a governing board in its annual report to the THECB of each institution's list of courses. The bill also requires institutions to annually report to the governing board of the institution information regarding the condition of the buildings and facilities of the institution, including information concerning deferred maintenance with respect to those buildings and facilities as defined by the THECB.

**Impact:** The bill directly impacts UT System and its institutions since it makes significant changes in the authority of the THECB, resulting in numerous modifications to programs administered by the board. Of greatest importance, the THECB will be required to adopt a number of rules affecting the institutions in which the UT System and its institutions, through rulemaking or statutory directive, will be directly involved, the bill requires that a new compliance monitoring program be established through rulemaking and requires further information and certification by the Board of Regents in its annual list of courses and an annual report to the Board of Regents regarding the condition of its buildings and facilities.

**Effective:** September 1, 2013

Helen Bright

[SB 217](#) by Patrick, et al. and Anchia

Relating to the continuation and functions of the state employee charitable campaign.

SB 217 amends the Government Code relating to the continuation and operation of the State Employee Charitable Campaign (SECC). SECC is subject to the Sunset Act and will be abolished on September 1, 2013, unless continued by the Legislature. The bill would continue the SECC for four years and would take effect on September 1, 2013. The bill would direct the Comptroller of Public Accounts (Comptroller) to provide administrative support to the State Policy Committee (Committee) including assistance with development and oversight of contracts and the development of SECC's budget.

**Clearly establishes the State Policy Committee's role in leading and overseeing the campaign**

SB 217 requires the State Employee Charitable Campaign Policy Committee (State Policy Committee) to establish the organization and structure of the campaign at the state and local levels, including establishing local campaign areas. The bill also requires the State Policy Committee to develop a strategic plan for and make improvements to the

campaign as needed, and ensure donations are appropriately distributed by a federation, fund, or charitable organization that receives money from the campaign.

SB 217 requires the State Policy Committee to enter into a contract with the selected state campaign manager for administration of the campaign. The bill requires the State Policy Committee, in coordination with the state campaign manager, to review and approve an annual campaign plan and budget, including specified costs, and post annual summary information regarding campaign performance on SECC's website. The bill also requires the state campaign manager to assist the State Policy Committee with these functions and to perform other duties required by the contract.

The bill requires the State Policy Committee to develop and use guidelines for evaluation of charity applications based on certain eligibility criteria, and to make these guidelines publicly available. The bill also requires the State Policy Committee, in consultation with the Comptroller, to ensure employee donations are appropriately distributed to charities. SB 217 provides that any change made by the State Policy Committee to the operation of SECC applies only to a state employee charitable campaign conducted on or after January 1, 2014.

### **Restructures the composition and terms of the State Policy Committee**

SB 217 reduces the size of State Policy Committee from 13 to nine members by reducing the number of state employees appointed by the Governor from four to two; reducing the number of retired state employees appointed by the Governor from three to one; and requiring the Lieutenant Governor and Comptroller to appoint three members each. The bill also requires the Governor, Lieutenant Governor, and Comptroller to attempt to appoint members to the State Policy Committee from institutions of higher education and a range of small, medium, and large state agencies. The bill also clarifies that the State Policy Committee, in its membership, must represent employees at different levels of employee classification.

SB 217 specifies that all current State Policy Committee members' terms expire September 1, 2013. By September 2, 2013, the bill requires the Governor to appoint one state employee and one state retiree, and the Lieutenant Governor and Comptroller to appoint one state employee each, and specifies their terms expire September 1, 2014. By September 2, 2013, the bill requires the Governor to appoint one state employee and the Lieutenant Governor and Comptroller to appoint two state employees each, and specifies their terms expire September 1, 2015. The bill specifies the State Policy Committee members serve two-year terms that expire on September 1. The bill also makes conforming changes to implement and reflect the new structure and terms of the State Policy Committee.

### **Requires the Comptroller to provide administrative support to the State Policy Committee**

SB 217 requires the Comptroller to provide administrative support to the State Policy Committee, including assistance in developing and overseeing contracts, developing

SECC's budget, auditing charities' distribution of money received from SECC upon request, and other administrative functions.

**Removes requirements for local employee committees and local campaign managers to exist**

SB 217 eliminates the statutory requirements and specificity for local employee committees and local campaign managers to exist. The bill instead requires the State Policy Committee to establish SECC's structure at the state and local levels, including establishing local campaign areas; appointing any local employee committees considered necessary to assist in evaluating applications from organizations seeking to participate in SECC only in a local campaign area; and appointing any local campaign managers considered necessary to administer the campaign in a local campaign area. The bill also makes conforming changes to reflect changes made to the local campaign structure and functions, including that the Attorney General shall represent any local employee committee appointed by the State Policy Committee.

SB 217 also provides that if the State Policy Committee appoints a local campaign manager to administer the campaign in a local campaign area, the State Policy Committee may authorize the local campaign manager to charge a reasonable and necessary fee in the same manner provided for the state campaign manager.

**Restructures the State Employee Charitable Campaign Advisory Committee**

SB 217 restructures the State Employee Charitable Campaign Advisory Committee by specifying that the four members who currently represent federations or funds that are not campaign managers must now represent statewide or local federations or funds generally. The bill also removes the requirement that four members represent campaign managers and instead requires four members to represent other charitable organizations participating in SECC.

SB 217 clarifies the Committee's advisory role by removing the requirements that the Committee recommend the number and geographic scope of the local campaign areas, and that the Committee review and submit the recommended campaign plan, budget, and materials used by campaign managers. The bill adds a requirement that the Committee provide input from charitable organizations participating in SECC to the State Policy Committee.

**Removes a statutory exemption for certain charities**

SB 217 repeals the statutory exemption that allows charities that have administrative costs that exceed 25 percent of revenues and that participated in the campaign before June 20, 2003 to participate in SECC. The bill specifies this change in the eligibility criteria applies only to the eligibility of a charitable organization to participate in and the use of contributions from a state employee charitable campaign conducted on or after January 1, 2014.

## **Amends and transfers part of SECC's un-codified session law into the Government Code**

SB 217 amends, re-designates, and transfers Section 18.01, Chapter 3 (H.B. 7), Acts of the 78<sup>th</sup> Legislature, 3<sup>rd</sup> Called Session, 2003 to Section 659.146(g), Government Code. The bill provides that a federation or organization that participated in SECC before June 20, 2003, is not barred from participation in the program solely as a result of the changes made by Sections 35, 36, 37, and 121(9) and (11), Chapter 1310 (H.B. 2425), Acts of the 78<sup>th</sup> Legislature, Regular Session, 2003. These Sections of the bill allow certain charities that participated in SECC prior to June 20, 2003, including international charities, to continue to participate under prior eligibility and contribution use provisions.

## **Sunset provision**

SB 217 continues SECC and removes it from future Sunset review.

## **Applies standard Sunset Across-the-Board Recommendations to the State Policy Committee**

SB 217 adds standard Sunset language specifying the grounds for removing a State Policy Committee member and requiring members of the State Policy Committee to complete training before assuming their duties.

## **Technical Change**

SB 217 removes duplicative language stating that a State Policy Committee member may not receive compensation or reimbursements for serving on the Committee.

## **The bill repeals the following statutory provisions.**

- Sections 659.131(1), (12), and (14), Texas Government Code
- Section 659.140(i), Texas Government Code
- Section 659.143, Texas Government Code
- Section 659.144, Texas Government Code
- Section 18.01, Chapter 3 (H.B. 7), Acts of the 78<sup>th</sup> Legislature, 3<sup>rd</sup> Called Session, 2003.

**Impact:** All departments handling charitable contributions on behalf of UT System or its Institutions should be aware of SB 217. No fiscal impact is anticipated.

**Effective:** This Act takes effect September 1, 2013, except Section 16 of this Act and Section 659.146(g), Government Code, as added by this Act, take effect January 1, 2014.

Tamra J. English

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