



Legislative Study Group

Texas House of Representatives

Chair Rep. Garnet Coleman
Treasurer Rep. Elliott Naishtat

Vice Chair Rep. Lon Burnam
Secretary Rep. Rafael Anchia

Vice Chair Rep. Valinda Bolton
Legal Counsel Rep. Dora Olivo

LSG Floor Report For Major State Calendar - Friday, May 22, 2009

<p>SB 175 By Sen. Shapiro/ et al. SP: Branch</p>	<p>Relating to limitations on the automatic admission of undergraduate students to general academic teaching institutions.</p>	<p>Higher Education</p>	<p><i>Floor Report For Unfinished Business From Thursday, May 21, 2009</i></p> <p>SB 175 allows public higher education institutions to limit the number of students they automatically admit under the Top 10 Percent rule to 50 percent of their annual entering class. An institution which enacts this limitation must admit students based on GPA starting from the top percentile rank.</p> <p>An institution limiting the number of students admitted under the Top 10 Percent rule must provide information to each school district, for dissemination to high school junior-level students and their parents, notice of which percentile ranks of high school senior-level students are anticipated by the institution to be automatically offered admission under the Top 10 Percent rule the next school year.</p> <p>Passage of this bill violates the intent and spirit of the law and further abdicates the Legislature's responsibility for ensuring access to higher education for high-performing Texas students. At a time when legislators and other leaders are calling for "incentivizing" educational achievement, this bill removes the reward for academically accomplished students. This bill, in essence, breaks the state's side of a contract with Texas students – you perform well in high school and we will ensure you get access to quality Texas higher education institutions.</p> <p>The original legislative intent of the Top 10 Percent law has been proved. Because of a Supreme Court ruling in 1996, Texas was no longer allowed to use race as a factor in admissions. Adopted as a result in 1997, the Top 10 Percent rule provides students from across the state and across racial and ethnic and financial backgrounds the opportunity to attend a tier one institution of higher learning. Students admitted under the Top 10 Percent law receive better grades and graduate at higher rates. Racial and ethnic diversity at UT-Austin has improved with Hispanic enrollment increasing by 29 percent and African American enrollment growing by 32 percent. Various legislators, university presidents, organizations and individuals, have called for the curtailment of this law, because it is estimated that in two years 100 percent of entering freshmen at UT-Austin will be Top 10 Percent students. While their response is to simply do away with or severely curtail a law that has resulted in increased attendance of people of color at Texas' top universities, increased graduation rates and grades and increased geographical and income diversity, the core of the problem stems from a lack of priority on the part of the Legislature with regard to higher education. Simply preventing access to students in the top ten percent of their classes will do nothing to meet the demand for quality, top tier institutions of higher education in a state with a growing population. It will instead further contribute to the state's "brain drain," as top students leave Texas for out-of-state universities that have high rankings. USA Today and other statewide and national media outlets have editorialized in favor of Top 10 Percent laws. California has had a statewide law providing automatic admission to tier one universities for students in the top 12.5 percent. This law has served California well for 48 years. The problem in Texas does not have to do with the law itself, it is the fact that there are not enough slots for excellence available. The high demand for excellence in education has to do with the lack of supply. <i>(Continued on next page)</i></p>	<p>Unfavorable</p> <p>Evaluated by: Will Pate 512-391-1770 Will@TexasLSG.org</p>
---	--	-------------------------	--	---

OK for Distribution – Rep Garnet Coleman

Legislative Study Group

Texas House of Representatives

			<p><i>(SB 175 continued from previous page)</i></p> <p>If the state were to place a higher priority on higher education it would provide more supply, keeping the best and the brightest in Texas, reducing "brain drain," and drastically increasing the human capital that is needed for a more prosperous state. The Legislature has already taken great strides towards this end this session with the passage of legislation that will foster the growth of more tier one universities.</p> <p>Rep. Branch's amendment to SB 175 to increase the percentage of students automatically admitted to Texas public universities to 60% from the Senate Bill's current 50% cap does not change our recommendation. Even with this amendment, SB 175 remains unfavorable because it would dilute and detract from the original legislative intent of the Top 10 Percent law. As mentioned in the LSG analysis, the Top 10 Percent law works, is good public policy and increases rural and ethnic diversity.</p> <p>SB 175 is simply bad public policy which hurts Texas students, businesses and the future of our state.</p>	
<p>SB 1569 By Sen. Eltife/ et al. SP: Strama/ Deshotel/ Harless</p>	<p>Relating to unemployment compensation modernization.</p>	<p>Business & Industry</p>	<p><i>Floor Report For Postponed Business From Thursday, May 21, 2009</i></p> <p>Unemployment insurance is an important safeguard for both workers and employers. During good times, it ensures stability for workers and ensures employer flexibility in employment decisions. In bad times, it serves as an economic stabilization mechanism, keeping layoffs from creating a vicious cycle of rising unemployment. The Texas labor market is underserved by the State's current unemployment system, which is ranked 50th in the nation based on the percentage of eligible workers served.</p> <p>SB 1569 would make three important changes to the current unemployment insurance system in Texas in order to draw down \$555 million in federal dollars. To start, for workers ineligible under the standard base period, it would authorize the use of an Alternative Base Period (ABP), which would count a worker's last four completed calendar quarters for calculation of benefits rather than the first four completed calendar quarters of the last five completed calendar quarters.</p> <p>For making this common-sense change that would benefit young and low-income workers, Texas would receive one-third of its federal stimulus money for unemployment insurance. Next, SB 1569 would make two reforms to draw down the other two-thirds of its share of federal unemployment insurance money. The first of these qualifying reforms would be to allow for trailing spouses to collect unemployment insurance benefits while searching for work in the location of their spouse's new job. The second would be to allow laid-off workers who have a history of working part-time to seek part-time work (20+ hours per week) and remain eligible to collect benefits while they search for a new job. Currently, part-time workers are automatically excluded from receiving benefits.</p> <p>During this economic crisis, job retention is critical, which is why Texas needs to take its unemployment insurance stimulus funds. Without the stimulus dollars, taxes on employers will rise sharply at exactly the wrong time, when Texas employers struggle to retain valuable workers.</p> <p>For Texas to compete during the coming recovery, the Legislature needs to give Texas workers and employers the crucial advantage this bill affords.</p>	<p>Favorable</p> <hr/> <p>Evaluated by: Patrick Yarborough 512-391-1770 Patrick@TexasLSG.org</p>

OK for Distribution – Rep Garnet Coleman



Legislative Study Group

Texas House of Representatives

<p>SB 469 By Sens. Carona/ et al. SP: Flores / Pena / Oliveira / Corte / Smith, W</p>	<p>Relating to an exemption from ad valorem taxation of the residence homesteads of certain totally disabled veterans and to the amount of the exemption from ad valorem taxation to which a disabled veteran is entitled based on disability rating.</p>	<p>Ways & Means</p>	<p>Currently, disabled veterans receive property tax exemptions on a portion of their residence homestead based on their disability rating. Veterans with disability ratings of 70% and above are grouped together with the same portion of the tax exemption. SB 469 sets veterans with 100% disability ratings apart, and provides them with 100% property tax exemption. In order to qualify for the 100% exemption, the veteran must have a 100% disability rating from the US Dept. of Veteran Affairs and receive disability compensation due to a service-connected disability. The veterans that would qualify are unable to work, and they receive compensation from the government due to a service-related disability. This bill would provide relief by removing the burden of property taxes from these individuals. SB 469 also clarifies language and number ranges that are used to determine the portion of residence homesteads that veterans receive exemptions for based on their disability rating. It does not change those ranges, just clarifies the beginning and ending number.</p>	<p>Favorable Evaluated by: Fran Rosebush 512-391-1770 Fran@TexasLSG.org</p>
<p>SB 555 By Sen. Duncan SP: Eiland</p>	<p>Relating to indemnification provisions in construction contracts.</p>	<p>Judiciary & Civil Jurisprudence</p>	<p>SB 555 adds a new Title to the Civil Practice and Remedies Code, additional miscellaneous provisions that includes indemnity provisions in construction contracts. The bill provides definitions for claim, construction contract, and indemnitor. A provision in a construction contract or in an agreement collateral to or affecting a construction contract is void and unenforceable as against public policy to the extent that it requires an indemnitor to indemnify, hold harmless, or defend another party to the construction contract, or a third party against a claim caused by the negligence or fault, the breach or violation of a statute, ordinance, governmental regulation, standard, or rule, or the breach of contract of the indemnitee, its agent or employee, or any third party under the control or supervision of the indemnitee, other than the indemnitor or its agent, employee, or subcontractor of any tier.</p> <p>A provision in a contract that requires the purchase of additional insured coverage, or any coverage endorsement or provision within an insurance policy providing additional insured coverage, is void and unenforceable to the extent that it requires or provides coverage the scope of which is prohibited under this chapter for an agreement to indemnify, hold harmless, or defend.</p> <p>This chapter does not affect a construction contract provision that requires a party to the contract to purchase: owners and contractors protective liability insurance, railroad protective liability insurance, contractors all-risk insurance, or builders all-risk insurance. The provisions of this chapter may not be waived by contract or otherwise. Any purported waiver is void and unenforceable.</p>	<p>Will of the House Evaluated by: Dawnetta Smith 512-391-1770 Dawnetta@TexasLSG.org</p>
<p>SB 2222 By Sen. Van de Putte SP: Corte</p>	<p>Relating to authorizing the creation of regional military sustainability commissions around military installations.</p>	<p>Defense & Veterans' Affairs</p>	<p>SB 2222 allows all counties with unincorporated area and municipalities with extraterritorial jurisdiction located within five miles of the boundary line of a military installation, each of which, with respect to the same military installation, constitutes a defense community, to establish and fund a Regional Military Sustainability Commission (RMSC). The purpose of RMSCs is to reconcile a city's growth with the maintenance of the military installation's mission. The bill sets out the intent, powers, duties and composition of an RMSC.</p>	<p>Favorable William Pate 512-391-1770 William@TexasLSG.org</p>
<p>SB 921 By Sen. Fraser SP: Rose/ Solomons/ Swinford</p>	<p>Relating to access by the members of electric cooperatives to meetings of the boards of directors and certain information of the electric cooperatives.</p>	<p>State Affairs</p>	<p>Following the scandal surrounding the abuses of the Pedernales Electrical Cooperative (PEC), this bill seeks to reform and strengthen the laws governing electrical cooperatives elections of directors, open meetings requirements, co-op member's access to records, required annual financial audits, member complaints process, financial policies, and co-op's investment decisions.</p> <p>The bill outlines certain guidelines that co-ops must follow in conducting elections for their board of directors that are fair and open to all members of the co-op. In order to utilize member's proxy votes in a director elections, the co-op must mail a letter to each member at least 30 days before the date of the actual proxy vote count which contains those up for election, designates incumbency, and information describing the process for proxy votes. These letters must also include several exact statements laid out in the bill that inform the voting member of what granting their proxy vote to a committee member means, that failure to designate particular candidates on their proxy vote means the committee member may choose who to cast the proxy vote for, that they may rescind their proxy at any time before proxy votes are cast, and that incentives for votes is strictly prohibited by state law. Other provisions pertain to co-ops that have over or under 170,000 members. <i>(Continued on next page)</i> <i>(SB 921 continued from previous page)</i></p>	<p>Favorable Evaluated by: Holland Jones 512-391-1770 Holland@TexasLSG.org</p>

OK for Distribution – Rep Garnet Coleman



Legislative Study Group

Texas House of Representatives

Electrical co-ops with over 170,000 members cannot have a committee of the board of directors that casts member's proxy votes in a director election and are given the choice of electing directors by district, with members living in each district casting a ballot for a director representing their district. Co-op members are allowed to nominate qualified other members of the co-op to be a director candidate with a signed petition. The co-op must adopt provisions in their bylaws specifying the number of signatures needed for a nominating petition, the time period within which the petition must be submitted, and limiting signatures to district resident if the co-op elects its directors by district. An additional provision is added requiring new electrical generation equipment purchased by these co-ops to run on alternative energy resources, unless the PUC grants permission to do otherwise.

Electrical co-ops with fewer than 170,000 members are allowed to have a board committee that casts proxy votes for members in a director election, but a director standing for reelection can no longer serve on that committee. If these co-ops choose to allow members to nominate qualified members for a director election, they must adopt provisions in their bylaws pertaining to written nomination petitions, specifying the number of signatures needed for a nominating petition, and specifying the time period within which the petition must be submitted.

This bill applies open meetings rules to electrical co-ops, entitling each member of the co-op to attend regular or special board meeting and requires that written minutes are kept of these meetings. At least three days advanced notice of the date, hour, place and planned agenda of a regular or special board meeting must be publicly provided to co-op members. This notice must be posted on a publicly convenient bulletin board at the main office and each district office, on the co-op's website if they have one, and be provided to members upon request. The three day advanced provision for the notice of a meeting may be suspended in the event of an emergency or urgent matter, but the notice must still be provided and the actions taken by the board during such a meeting must be ratified at the next meeting for which normal notice is given. All of the same rules apply to the meetings of an executive committee, if the board so chooses to form one.

The board may convene an executive session at their discretion, which public members do not have access to. An executive session must cover sensitive, privileged, confidential, or proprietary information such as confidential personal information, contracts, lawsuits, real estate transactions, competitively sensitive information, or system security information. When a regular or special board meeting is reconvened, the final action on matters discussed in an executive session must be announced. Matters involving confidential personnel information, real estate transactions, competitively sensitive information, or security information are exempt from this disclosure. Executive sessions must have a written or audio record that must be kept for at least two years. This record must include the subject of each matter deliberated, a record of any further action taken, the date, and the start and end time of each session. Co-ops with fewer than 170,000 members are to have elections every 5 years to determine if the above rules pertaining to executive meetings are to be adopted or continued, with the first election to occur before 2011.

Co-op members are given the right to inspect and copy the books and records of the co-op at any reasonable time so long as they submit a written request. The co-op may charge a member the cost of providing such information and may limit the members access to information that relates to a trade secret, a pending or reasonably anticipated law suit, a real estate transaction for a project that has not been announced or had the contract awarded, would give an advantage to a competitor if released, personal information that would violate the law or clearly constitute an unwarranted invasion of personal privacy, electrical system security, or is otherwise considered confidential, privileged, or proprietary.

The board is to adopt official policies pertaining to travel expenditures, reimbursement, and conflicts of interest for directors, officers, and employees of the co-op.

(Continued on next page)

(SB 921 continued from previous page)

OK for Distribution – Rep Garnet Coleman



Legislative Study Group

Texas House of Representatives

			<p>They must also develop and institute policies pertaining to whistleblower protections, a budget for planning and cost control, the creation of a committee that audits the boards actions, and criteria and procedures for the selection, monitoring, review, and evaluation of contracted outside services. Further, an independent financial audit of the co-op must be performed annually by a professionally qualified and unaffiliated entity.</p> <p>Co-op members are permitted to file written complaints with the co-ops general manager, who must take corrective action within 20 days for complaints that they deem infringe the member’s rights guaranteed under this act. If the complaint does not pertain to infringement of member rights, or if the general manager does not adequately respond within 20 days, the member can file a written complaint with the Attorney General’s Consumer Protection Division. The bill also includes standard clauses requiring the co-op to cooperate with the Attorney General and guidelines for the appropriate confidentiality of co-op provided materials and documentation.</p> <p>Finally, to address the issue of co-ops boards investing co-op money in entities outside their charge, this bill issues guidelines for proper notification of co-op members of such transactions and their justification. A co-op must notify its members within 30 days if it or one of its affiliates creates or acquires an interest in an entity that does not generate, transmit, or distribute electricity. This notification must include the entities name and description, the reason for the acquisition decision, the associated costs and their method financing, and a description of the anticipated effect of the acquisition on electric rates or prices.</p>	
<p>SB 1529 By Sen. Whitmire SP:Gallego</p>	<p>Relating to criminal asset forfeiture, the disposition of proceeds and property from criminal asset forfeiture, and accountability for that disposition; providing civil penalties.</p>	<p>Criminal Jurisprudence</p>	<p>SB 1529 would not allow a peace officer or prosecuting attorney to request, require, or in any manner induce any person, including a person who asserts an interest in or right to property seized under this chapter to exercise a document purporting seized. Under this chapter, to execute a document purporting to waive the person’s interest in or right to the property. Any post-judgment interest from any source shall be used for the same purpose as the principal.</p> <p>Under current statute all law enforcement agencies and prosecuting attorneys who receive proceeds or property under this chapter shall account for the seizure, forfeiture, receipt, and specific expenditure of all the proceeds and property in an audit to be performed annually by the commissioner’s court or governing body of a municipality, as appropriate. The audit must be completed on the appropriate form provided by the Attorney General. SB 1529 would require the audit to include a detailed report and explanation of all expenditures, including salaries and overtime pay, officer training, investigative equipment, supplies, and other items. A certified copy of the audit shall be delivered by the agency or prosecuting attorney to the Attorney General within 60 days of the date the annual report ends. SB 1529 would eliminate the requirement for the report to be delivered to the Comptroller’s Office.</p> <p>SB 1529 allows the state auditor to perform an audit or conduct an investigation at any time in accordance with this article and the State Auditor chapter under the Government Code, related to the seizure, forfeiture, receipt, and specific expenditure of proceedings and property received under this chapter. The state auditor is entitled at anytime to access any book, account, voucher, confidential or non-confidential report, or other record of information including electronic data maintained under disposition of forfeited property except that if the applicable information is restricted by state or federal law. The state auditor may access the information only with the approval or a court or federal administrative agency, as appropriate. If the results of an audit or investigation indicate that an agency or prosecuting attorney has knowingly or is knowingly violating a provision of this chapter, the state auditor shall promptly notify the Attorney General for the purpose of initiating appropriate enforcement proceedings.</p> <p>In the name of the state, the Attorney General may institute in a district court in Travis County or in a county served by the agency or prosecuting attorney as applicable, a suit for injunctive relief to recover a civil penalty, or for both injunctive relief and a civil penalty if the results of the audit or investigation indicate that the agency or prosecuting attorney has knowingly or is knowingly violating a provision of this chapter.</p>	<p>Favorable</p> <hr/> <p>Evaluated by: Dawnetta Smith 512-391-1770 Dawnetta@TexasLSG.org</p>

OK for Distribution – Rep Garnet Coleman



Legislative Study Group

Texas House of Representatives

<p>SB 66 By Sens. Nelson/ et al.</p> <p>SP: Shelton/ Hartnett/ Alonzo/ et al.</p>	<p>Relating to health care coverage for children in Title IV-D cases.</p>	<p>Judiciary & Civil Jurisprudence</p>	<p>SB 66 provides affordable health care coverage for children in Title IV-D cases. Under current statute an obligor could be responsible to ensure that a child has health care coverage, SB 66 would provide health care coverage for child if the obligor or obligee do not have coverage available through employment or if available coverage is too expense.</p> <p>SB 66 would require the Title IV-D program to consult with the Texas Department of Insurance and the Health and Human Services Commission and representatives of the insurance industry in this state to develop and implement a statewide program to address the health care needs of children in Title IV-D cases. The director of the Title IV-D agency may establish an advisory committee to consult with regarding the implementation and operation of the program.</p> <p>The objective of the program is to provide children with Title IV-D cases with basic health care services. The agency may use available private resources in administering the program. The agency shall adopt rules as necessary to implement the program. A health benefit plan issuer must be certified by the Texas Department of Insurance, and may not deny any child that is eligible for the program services, regardless of any preexisting health conditions the child may have. A child under the program remains eligible until termination of the parent's duty to pay child support.</p> <p>The agency must notify the courts when the program has been implemented and is available to provide for the health care needs of children that are eligible. The notice must specify the date children are able to be enrolled. On or after the date specified the court shall order that the child be enrolled in the program unless other coverage is available.</p> <p>Payment for the program may be enforced by the agency to the obligor in the same means as a child support obligation. The program is not subject to any provisions of the Insurance Code or other law that requires coverage or the offer of coverage of a health care service or benefit.</p> <p>Any health information or financial information obtained by the program or a third party administrator is confidential and open to public inspection. The agency may adjust the order as necessary on an annual basis to reflect changes in the amount of premium costs associated with the child's enrollment. The agency must provide notice of the adjustment to the obligor and the court clerk that rendered the order.</p>	<p>Favorable</p> <p>Evaluated by: Dawnetta Smith 512-391-1770 Dawnetta@TexasLSG.org</p>
<p>SB 18 By Sens. Estes/ et al.</p> <p>SP: Bonnen/ Pitts/ Kuempel/ Geren/ Homer</p>	<p>Relating to the acquisition of property by entities with eminent domain authority.</p>	<p>Land & Resource Management</p>	<p>SB 18 amends legislation passed last session and clarifies that a governmental or private entity may not take private property through the use of eminent domain if the taking is for economic development purposes, unless it directly results in and from municipal community development or urban renewal activities. It stresses that private property may not be taken for other than public use.</p> <p>SB 18 requires that any entity authorized to exercise eminent domain shall submit a letter by certified mail with receipt request to the comptroller stating that they are authorized, identifying the provision that grants the authority. If the letter isn't received by September 1, 2011 the right to eminent domain expires. By March 1, 2011 the comptroller shall provide a report regarding these entities to the governor, lieutenant governor, speaker of the house, appropriate standing committees of the senate and house and the Texas Legislative Council. The TLC shall prepare for the 83rd Legislature, statutory revisions reflecting expired rights of eminent domain.</p> <p>The section referenced as the "Truth in Condemnation Procedures Act" applies only to use of eminent domain by a government entity. Such an entity must first authorize the initiation of condemnation at a public meeting by a record vote. <i>(Continued on next page)</i></p>	<p>Favorable</p> <p>Evaluated by: Virg Parks 512-391-1770 Virg@TexasLSG.org</p>

OK for Distribution – Rep Garnet Coleman



Legislative Study Group

Texas House of Representatives

(SB 18 continued from previous page)

The bill specifies language by which the motion to condemn should be made. A single resolution may be applied to all units if the motion clearly indicates such and the minutes reflect the action; unless more than one member of the governing body objects. Two or more tracts of land may also be considered with one motion if properties are for the purpose of building a facility that connects one property to the other (such as with a bridge or overpass) or both properties are owned by own individual. The ordinance must identify the general area affected in a manner that provides property owners in and near the area notice that their property might be considered for condemnation. SB 18 removes language regarding "slums" from statute, referencing instead specific conditions that could define a property as "blighted" including unsanitary living conditions, known illegal activity, identification as a super-fund sight, potential for imminent harm, or owner refusal to make necessary repairs. The definition also includes more subjective measures such as maintenance below county or municipal standards or that it presents an economic liability to the immediate area because of deteriorating structures but not purely on the basis of aesthetics. SB 18 requires a municipality to notify the property owner in writing by first class mail and/or affixed to the property itself and allows for removal of the designation if repairs are made. Otherwise, a property designation of blight remains for two years and maybe re-designated for another two after that. If it is found that one person or entity owns two or more contiguous units, they maybe considered as one unit. SB 18 further requires that each individual property must be defined as blighted and not the entire neighborhood.

Sadly, SB 18 leaves in statute much of the language that defines neighborhoods as blighted based on income and labels them "a serious and growing menace that is injurious and inimical to the public health, safety, morals and welfare of the residents of this state." Words such as these fail to acknowledge that a house albeit dilapidated may still be someone's only home. Another concern is that SB 18 adds little to require the consideration of economic hardship, illness or other impediments to making repairs but encourages voluntary repair and rehabilitation. Nor are extenuating circumstances that might define a property as blighted considered. An elderly grandmother who suspects her grandson is selling drugs might also depend on him to help care for her. This grandmother could legally be displaced even after passage of SB 18. Furthermore, the federal Department of Housing and Urban Development when defining homelessness defines a structure with as little as three walls and partial roof as a home. Therefore, persons renting homes considered blighted and uninhabitable by SB 18 might be ineligible for federal rental housing assistance. This conflict in definitions places low-income, especially disabled, persons at risk of homelessness.

The section regarding disclosure of certain information is amended to specify that a property owner whose property is being considered for seizure by eminent domain be notified of an offer to purchase or lease the property by certified mail, return receipt requested. The entity seeking to acquire the property is required to disclose any appraisals prepared in the previous decade and the property owner to disclose any current appraisals. The property owner may discuss any offer or agreement with others or keep the offer confidential. SB 18 requires an entity with eminent domain authority to make a bona fide offer for the property in question and delineates the process for making that offer. An initial offer is made in writing and on or after 30 days, a final offer is made also in writing. A copy of an independent written appraisal, copy of the deed or easement conveying the property, and a copy of the landowner's bill of rights must be included in the final offer. The final offer should be equal or greater than the appraisal. The property owner will then be allowed at least 14 days to respond.

If the property owner and entity with eminent domain authority cannot agree on a price for damages, the entity may file a condemnation petition. Existing statute requires the petition describe the property, state the name of the owner (if known), that the entity and owner cannot agree on a price, and that the owner was provided a copy of the landowner's bill of rights. SB 18 adds the requirements that the petition state specifically the intended use, state that a bona fide offer was made, and be provided to the property owner by certified mail.

(Continued on next page)

(SB 18 continued from previous page)

OK for Distribution – Rep Garnet Coleman



Legislative Study Group

Texas House of Representatives

Regarding the court hearing the petition, the judge is required to appoint three real property owners as special commissioners, of which the property owner may eliminate one. The judge will appoint a replacement. The hearing must be scheduled at least 20 days later. Currently, the value of the property and injury to the property owner is considered by the court. SB 18 adds consideration of the cost of necessary relocation of homesteads or farms, such that owners do not incur additional moving expense yet enjoy a standard of living comparable to the previous standard of living. SB 18 also considers loss of egress (primarily regarding easements) to major roads an injury incurred by the owner. A concern is for individuals whose property is not a homestead or farm and renters and may not have the resources to relocate. If the court determines that a bona fide offer was not made, it could order the entity condemning the property to drop the petition and pay court and attorney costs.

The entity with eminent domain authority is required to disclose that the owner or owner's heirs maybe able to repurchase the property at the lesser of the price paid to the owner or the fair market value of the property. The entity is again required to notify previous owner when such an opportunity arises. The property owner or heirs is entitled to repurchase the property if the public use for which it was acquired is canceled before the property is used, the property becomes unnecessary for that use, or no actual progress is made toward that use. Actual progress toward intended use is defined as the completion of two of the following conditions within ten years: a significant amount of labor is performed either on site or by an architect, engineer, or surveyor, a significant amount of materials are purchased, applications for state or federal funds or permits are submitted, or an adjacent tract of land is purchased for the same project. For a government entity, the adoption of a development plan that states only one of the above conditions will be met within ten years will also indicate intent.

The owner of property seized by eminent domain may also request information regarding the intended use of the property and any actual progress made. SB 18 further requires that non-government entities must provide information requested by the property owner relating to the taking of the property. The court in which the condemnation was initiated has jurisdiction to enforce this requirement. If the entity refuses to produce requested information, the court may award the requestor's attorney fees incurred in compelling the entity to comply. SB 18 includes a section that states it should be interpreted as meant to prevent the abuse of power of eminent domain by charitable corporations, specifically medical centers, and protect residential neighborhoods from such abuses. Such an entity may not acquire property in a residential neighborhood through use of eminent domain or do so through a trustee or agent. Nor may the entity purchase property that has been devalued by block-busting, a practice whereby acts such as purchasing improved property and allowing it to become blighted or demolishing existing properties reduces the value of remaining properties. Such an entity that acquired residential property prior to September 1, 2009 and is holding it for future use but has no plan for that use shall sell the property making it subject to the same residential deed restrictions as before.

Furthermore, a medical center condemning entity may not challenge deed restrictions. SB 18 requires that litigation costs be paid by the medical center if a residential litigant prevails or succeeds in improving the community. It does not make the resident responsible if they fail. Additionally, SB 18 requires that the entity remediate the negative effects of parking facilities built in a residential neighborhood through the use of louvers, screens, panels, and trees.

SB 18 also makes changes in the transportation code establishing that the standard for determination of the fair value of the state's interest in access rights to a highway right-of-way is the same as that applied to acquisition of access rights in existing statute and damages should be paid to the property owner accordingly. The bill further limits the rights of a water district to use eminent domain to build a road or easement outside the district boundaries. SB 18 also narrows the definition of common carrier to "common carrier pipeline" and allows a property owner whose land is acquired for easement to build an access road up to or on the easement and specifies limitations to that right as well as requiring notification to pipeline operators.

OK for Distribution – Rep Garnet Coleman



Legislative Study Group

Texas House of Representatives

<p>SB 1877 By Sens. Nelson/ et al.</p> <p>SP: Zerwas/ Coleman/ McCall/ Parker/ Rose/ et al.</p>	<p>Relating to the creation of the Texas Medical Child Abuse Resources and Education System grant program.</p>	<p>Public Health</p>	<p>In the 80th Legislature, a component of SB 758 (relating to child protective services) created a committee on pediatric centers relating to abuse and neglect of children. SB 1877 is the result of the recommendations from this committee, establishing a grant program, the Texas Medical Child Abuse Resources and Education System (MEDCARES), to provide a framework for grant awardees of pediatric regional centers to provide medical expertise in the determination findings and treatment of cases of child abuse and neglect.</p> <p>The bill establishes a MEDCARES Advisory Committee, consists of nine members with expertise in child abuse and neglect, to assist DSHS in developing rules and priorities for the use of awarded grant funds. The bill establishes criteria for how the grant funds may be utilized such as: (1) comprehensive evaluations and assessments from medical professionals and psychologist; (2) education for healthcare professionals on the diagnosis and treatment of child abuse and neglect; and (3) by using evidence-based research findings to develop protocols for preventive, evaluation, and treatment of child abuse and neglect.</p> <p>Additionally, the bill permits DSHS to solicit for and accept grants and donations. DSHS is not required to award a grant unless specifically money is appropriated for the program.</p>	<p>Favorable</p> <hr/> <p>Evaluated by: Katharine Ligon 512-391-1770 Katharine@TexasLSG.org</p>
--	--	----------------------	--	--

OK for Distribution – Rep Garnet Coleman

