

SUBJECT: Administrative revisions for public institutions of higher education

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 7 ayes — Branch, Bonnen, Brown, D. Howard, Johnson, Lewis, Patrick

0 nays

2 absent — Castro, Alonzo

WITNESSES: For — None

Against — None

On — Ted Melina Raab, Texas American Federation of Teachers;
(*Registered, but did not testify*: Susan Brown, Texas Higher Education
Coordinating Board; Steve Collins, Kelley Scott, The University of
Texas System)

DIGEST: CSHB 3517 would amend various sections of the Education, Government, Natural Resources, Tax, Utilities, Insurance, Labor, and Health and Safety Codes and the Texas Civil Statutes involving administrative and reporting requirements by public institutions of higher education. The bill contains seven articles relating to financial management, goods and services, human resources, real estate and construction, board appointments, reports, records and audits, and repealers.

Article 1. Financial management. The bill would amend Education Code provisions on financial management practices, including deposits in foreign banks, the disposition of small credit balances, and the issuance of state securities.

The bill would require that funds be deposited within seven days of receipt by the institution, rather than within seven days of collection. The bill would allow institutions with overseas programs to have local bank accounts to pay local vendors. The foreign bank would have to:

- be licensed and supervised by a central bank;
- be audited annually by an accounting firm that followed international financial reporting standards; and
- maintain a capital to total assets ratio that was no less than the greater of 4 percent or the minimum tier 1 capital to total assets ratio required for depository institutions insured by the FDIC.

The bill would eliminate separate duplicative requirements for annual financial reports and instead require the annual financial reports required of all state agencies under the Government Code.

Collection of delinquent debt. If under the rules adopted by the attorney general that allow agencies to adopt “reasonable tolerances” below which an obligation should not be referred to the OAG for collection, institutions would not have to refer a delinquent obligation for collection to the attorney general or to expend resources for further collection efforts if, considering the amount, security, likelihood of collection, expense, and available resources, the institution determined that further collection should be not pursued. The bill would require Travis County to be the mandatory venue for suits to collect debt brought by the University of Texas System.

Disposition of small credit balances. The bill would amend the Education and Property Codes to authorize higher education institutions to maintain and administer locally unclaimed money funds composed of unclaimed and presumed abandoned credit balances of less than \$25. Ownership rights would be preserved, and a searchable data base would be required.

Institutions would have to use the fund to pay claims on the money. If there were insufficient funds to pay a valid claim, institutions would have to use other money to pay them. The bill would establish requirements for the use of unclaimed money as other educational and general funds.

Payment by electronic funds transfer. The bill would authorize an institution to use electronic funds transfer and pay cards to make any payment, including for salary and wages.

Approval of state security. The bill would amend the Government Code to stipulate that a state security issued by a higher education institution, or issued at the request of or for the benefit of an institution, would not be

subject to Texas Bond Review Board approval unless the general revenue of the state was pledged to the payment of the security.

Article 2. Goods and services. The bill would address qualifications of certain business entities to enter into contracts with higher education institutions and eliminate certain reporting requirements.

The bill would authorize contracts in limited instances in which a member of a governing board had an interest that was not substantial. If a board member had substantial interest in a business entity with which the institution sought to contract, the member would have to declare the interest and abstain from voting on the contract. The bill would establish criteria for defining substantial interest.

For best-value purchasing in the acquisition of goods and services, the bill would exempt institutions generally from Subtitle D, Title 10 of the Government Code, which governs state purchasing and general services. This would leave institutions subject to regulations of acquisition and services under the Education Code. The bill would stipulate that professional services had to be procured under current law governing professional services, such as engineering services, in accordance with the professional services procurement act. It also would stipulate that in a contract for acquisition of goods and services, any provision required by law would be considered to be part of the executed contract. Institutions still would be required to comply with purchasing laws related to historically underutilized businesses and purchasing from persons with disabilities.

Electronic and digital signatures. The bill would authorize institutions and university systems to determine whether and the extent to which the institution or system would send and accept electronic or digital signatures. If there were a conflict, the bill would prevail over current laws governing electronic transactions.

Interagency contracts for information resource technology. The bill would authorize institutions to provide information resource technology to another state agency without a competitive procurement.

The bill would eliminate attorney general approval of auto liability policy limits and required use of standard forms.

Contracts with higher education institutions or university systems. The bill would stipulate that competitive procurement would not be required for a state agency to contract with a local government or political subdivision through an interlocal cooperation contract on a cost recovery basis. A university system or institution would be required to provide notice to the Legislative Budget Board of a contract for a major information system only if the cost of the system exceeded \$1 million.

The bill would amend the Government Code to extend the exemption from purchaser training to include all institutions, not just medical and dental units.

Article 3. Human resources. The bill would amend the Education Code to authorize a university system or institution to permit payroll deductions at the request of an employee if the public purpose would be served and employees would benefit.

The bill would amend the Insurance Code to specify eligibility of an incapacitated dependent child under the group health insurance benefits for the University of Texas and Texas A&M University Systems employees.

The bill would authorize the University of Texas and Texas A&M University systems to establish group health insurance premium discounts, rebates, or a reduction in otherwise applicable co-payments, co insurance, or deductibles, or any combination of these incentives, for individuals who participated in a system-approved program that promoted disease prevention, wellness, and health.

The bill would authorize the continuation of group health insurance at institutional expense for tenured faculty who worked part-time under an agreement in which the faculty member would retire at a future date certain.

Article 4. Real estate and construction. The bill would conform confidentiality statutes governing information related to the purchase, sale and the development of real estate to similar statutes governing information held by the General Land Office. The bill would allow an expedited process for coordinating board reviews of higher education constructions projects and real estate purchases.

The bill would stipulate that, in addition to the location, purchase price, or sale price of real property purchased or sold by or for an institution, the following would be confidential and exempt from disclosure until all deeds for the property that were applicable to the transaction or series of related transactions were executed and until all substantive performance or executor requirements of applicable contracts had been satisfied: the development and sale price of real property developed and a contract provision related to the development, purchase, or sale of the property.

The bill would authorize a coordinating board staff review following a certification from the institution that the institution was in compliance with institutional standards and project standards, that the project was on the campus master plan, and that the institution had no outstanding deficiencies under the most recent facilities audit. This would not apply to a new branch campus or a new higher education unit or center.

The bill would amend the Government Code to exempt higher education institutions from the Facilities Commission uniform general conditions that are incorporated in all building constructions contracts. The bill would also eliminate the requirement that alternative energy feasibility studies be considered in a public hearing by the governing board. The bill would eliminate the requirement that the Texas Facilities Commission lease space for or delegate leasing authority to higher education institutions.

The bill would amend the Tax Code to extend a property tax lien for deferred taxes on the residence homestead of elderly or disabled persons to a life tenant's interest unless a university holding a remainder interest consented to the tax deferment.

Article 5. Board appointments. The bill would amend provisions relating to exemptions from public disclosure of information that would tend to identify applicants for chief executive officer of an institution of higher education and would eliminate certain regent appointments. The bill would eliminate the regent position of the University of Texas Pan American University from the Type 2 Diabetes Risk Assessment Advisory Council. The regent appointment of an ex officio nonvoting member to the board of the Gaines County Solid Waste Management District also would be eliminated.

Article 6. Reports, records, audits, notices. Certain reporting requirements applicable to higher education institutions and university systems would be eliminated or expire.

The bill would eliminate medical and dental units from having to submit a report relating to the Texas Success Initiative regarding academic freshmen. The “small classes” reports on undergraduate classes with fewer than 10 students and graduate classes with fewer than five students would be eliminated. The bill would authorize the expiration of certain reporting requirements as of September 1, 2013, unless affirmatively continued in effect by statute or rule.

The bill would stipulate that information maintained by or for an institution that would reveal its plans or negotiations for commercialization or research, or that consisted of unpublished data, would not be subject to disclosure under the public information laws.

CSHB 3517 would eliminate the report on deferred maintenance to the coordinating board if a university system maintained an ongoing system-wide capital improvement program approved by the system’s board of regents.

When planning and evaluating programs for the disadvantaged, junior colleges no longer would be required to submit a plan for financial aid and the annual evaluation report of compensatory courses.

The bill would require the Governor’s Office and the Legislative Budget Board, in consultation with public higher education institutions, to review legislative appropriations requests to identify cost savings and efficiencies.

A university system or institution of higher education would be required to account for all personal property as defined by the comptroller. At all times, the property records would be required to accurately reflect the personal property possessed by the system or institution.

CSHB 3517 also would exempt higher education institutions or university systems from annual reporting on employees, space, itemized fees, purchases, aircraft usage, vehicles, commodities, and services. When giving notice to the LBB and the Governor’s Office of major consulting contracts, institutions no longer would have to obtain a finding of fact

from the Governor's Budget and Planning Office that consulting services are necessary.

The bill would exempt institutions from notice to the LBB of consulting contracts exceeding \$14,000. The bill would also allow annual reporting on energy conservation plans rather than quarterly reporting and institutions to be exempt from annual reporting to the state office of risk management as well as the annual submission to the Texas Historical Commission of photographs and information on buildings acquired that are at least 45 years old.

Article 7. Repealer. The bill would repeal more than 30 reporting requirements in the Education, Government, and Labor Codes and the Texas Civil Statutes. Twelve of the repealed sections would become effective September 1, 2011, and 18 would become effective September 1, 2013. A few of the reports include information on crime statistics, class size, expert witnesses, technology workforce grants, reports to the LBB on permanent health fund for higher education institutions, and the Texas A&M real estate research advisory committee funds.

Article 7 includes a provision that would govern conflicts between the bill and other acts of the 82nd Legislature.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS
SAY:**

CSHB 3517 would eliminate unnecessary administrative burdens for higher education institutions, decrease the cost of administration, and lower costs to students. It would facilitate more effective administrative operations and streamline higher education business affairs. It would provide some relief from unfunded mandates and provide more flexibility in the administration of higher education in Texas. It would allow higher education leaders to invest more in instruction and less on administration. This would be important in today's budget situation when higher education institutions are being required to do more with less. All public universities have played a role in either identifying efficiencies, suggesting changes, or reviewing proposals.

CSHB 3517 was a collaborative effort by higher education institutions, the Council of University Presidents and Chancellors, and the Texas Higher

Education Coordinating Board. Higher education officials and stakeholders were asked to identify administrative requirements that were unnecessarily burdensome or duplicative.

Reports; records; audits; notices. Currently, universities are required to submit more than 200 reports that are required by law, rule, or policy. This accumulation of reporting requirements has increased the cost of higher education, often with little or no corresponding value. The cost of administration has increased due to the need to add administrative positions, which has in turn caused the cost to students to increase. Some of these reports have little relation to teaching, research, or services. The bill would not eliminate some of the reports until September 2013, which would allow time for review and an intervening legislative session.

Financial management. Many institutions have substantial overseas programs, such as study abroad programs, but current law prohibits institutions from having foreign depository banks. Institutions need the authority to maintain local accounts to pay local vendors in accordance with local customs.

Both the comptroller and the LBB have identified savings that would be available through increased use of electronic funds transfers and pay cards instead of paper checks and warrants.

Currently, a state agency cannot issue a state security unless it is approved by the Texas Bond Review Board or is exempted from approval. Current law defines a state security as an obligation, including a bond, issued by a state agency and includes installment sale or lease purchase obligations if the principal amount exceeds \$250,000. As a result, obligations that are self-supporting and have no impact on general revenue still require the approval of the Texas Bond Review Board. This review has cost money because institutions are not able to move quickly enough. Self-financing projects should not have to be reviewed.

Purchasing and procurement. The bill would streamline best-value procurement for higher education. Current law exempts higher education institutions generally from the purchasing provisions of specifically identified chapters of Subtitle D, Title 10 of the Government Code. Some medical and dental institutions are more broadly exempt from Subtitle D. The bill would align higher education generally with current law applicable to those medical and dental institutions. This would make a big

difference in the administrative burden in connection with best-value procurement. It would preserve the application of professional services procurement requirements and the application of historically underutilized business laws and laws relating to procurement from persons with disabilities.

Current law requires notice to the LBB of contracts for major information systems costing \$100,000 or more. For information systems across a university system, the number is so low that it results in significant reporting.

Human resources. State law allows various and scattered instances for payroll deductions, and institutions generally may only allow deductions where expressly authorized by law. This limits the ability of a system or university to promptly respond to changes in federal law, such as a new savings vehicle, and limits the ability to provide deductions frequently requested by employees, such as savings plans. Other entities, like counties, have this generalized authority.

The bill would allow institutions to incentivize tenured faculty who desire to work part-time to do so by continuing their group health insurance at institutional expense. Now, state law limits a university system's contribution for health insurance premiums for employees working part time to no more than 50 percent of the cost of coverage. This actually encourages faculty to retire rather than work part-time.

Construction and real estate. In monetizing real estate holdings, confidentiality is critical during the negotiations and bargaining positions. Current law does not address leases and other development information, protecting only sale and purchase information. It would be important to extend confidentiality protection to other development matters.

Higher education is not generally subject to Texas Facilities Commission rules and requirements, but is required to include the commission's uniform general conditions. Those conditions do not accurately reflect current construction processes and procedures, and higher education is required to supplement contracts to clarify the differences.

OPPONENTS
SAY:

By eliminating some of the reporting requirements of higher education institutions and the disclosure of the development of property purchased by a higher education institution, this bill would decrease transparency and

accountability of higher education. Many of these reports proposed to be eliminated are currently available to taxpayers and stakeholders. The reports should not be removed from public view and neither should information about real estate development be kept from the public.

Financial management. CSHB 3517 would take bond review by the Texas Bond Review Board out of much of the higher education arena, which would be troublesome. Some institutions that have a high credit rating also have a significant depth of financial knowledge. Removing bond review of those non-general revenue transactions would not be a concern for those institutions. However, if an institution had a weaker credit rating it might also have a lack of financial management knowledge, internal oversight, and cash flow. Smaller institutions might inadvertently over-extend themselves or might not negotiate the best terms, especially the fees, which could increase the costs of issuance.

A better approach would be to base an exemption from bond review on an institution's credit rating. If the credit rating were above a certain level, then the institution could be exempt from bond review board approval.

The use of pay cards instead of paper checks and warrants could negatively impact a low-wage earner. There normally are fees associated with the use of pay cards. Employees would need to be assured that they would not be charged a fee to access their pay.

The bill provisions relating to employee payroll deductions are not specific. The bill should clarify for what the deductions could be used.

NOTES:

A related bill, SB 5 by Zaffirini, was withdrawn from further consideration in the Senate on May 3. Many of the provisions of SB 5 were added to SB 1581 by Ogden, the public and higher education fiscal matters bill, as a floor amendment before the bill finally passed on May 9.