

BILL ANALYSIS

Senate Research Center

H.B. 4180
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Intergovernmental Relations
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 4180 amends the Health and Safety Code to provide for a county health care provider participation program in a county that is not served by a hospital district or a public hospital, has a population of more than 75,000, and borders or includes a portion of the Sam Rayburn Reservoir. The bill establishes that such a program authorizes a county to collect a mandatory payment from each institutional health care provider located in the county to be deposited in a local provider participation fund established by the county. The bill authorizes money in the fund to be used by the county to fund certain intergovernmental transfers and indigent care programs. The bill authorizes the commissioners court of a county to adopt an order authorizing a county to participate in the program, subject to certain limitations. The bill defines, among other terms, "institutional health care provider" as a nonpublic hospital that provides inpatient hospital services.

H.B. 4180 sets out the powers and duties of a commissioners court with respect to the county health care provider participation program. The bill provides for an annual public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent. The bill provides for the designation of one or more banks located in the county as the depository for mandatory payments and for the creation, composition, and use of a county's local provider participation fund.

H.B. 4180 provides for the amount, assessment, and collection of a mandatory payment. The bill establishes that interest, penalties, and discounts on mandatory payments are governed by the law applicable to county property taxes. The bill authorizes a county to provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services to the extent any provision or procedure under the bill's county health care provider participation program provisions causes a mandatory payment to be ineligible for federal matching funds.

H.B. 4180 establishes that a five-member board of emergency services commissioners serves as the governing body of an emergency services district that was authorized to have a board of emergency services commissioners appointed under certain former law and that is located partly in a county with a population of less than 22,000 and partly in a county with a population of more than 54,000. The bill establishes that a commissioner serves a two-year term. The bill requires the commissioners court of the smallest county in which the district is located to appoint two commissioners to the board, requires the commissioners court of the largest county in which the district is located to appoint three commissioners to the board, and sets out eligibility and residency requirements for the commissioners. The bill requires a commissioners court, on January 1 of each year, to appoint a successor for each commissioner appointed by that commissioners court whose term has expired. The bill requires the appropriate commissioners court to fill a vacancy on the board for the remainder of the unexpired term. The bill exempts such an emergency services district from statutory provisions relating to the election of the board of a district located in more than one county. The bill provides for the validation, ratification, and confirmation of certain actions and proceedings of an emergency services district to which certain former law applied taken between January 1, 2012, and the bill's effective date.

H.B. 4180 authorizes the board for an emergency services district located wholly in a county with a population of 75,000 or less by resolution to determine to hold the board's regular

meetings less frequently than monthly. The bill requires the resolution to require the board to meet either quarterly or every other month and requires the board to meet as required by the resolution.

H.B. 4180 amends the Local Government Code to make the statutory provision establishing the county judge, if present, as the presiding officer of the county commissioners court inapplicable to a meeting held by videoconference call if the county judge is not located at the physical space made available to the public for the meeting.

H.B. 4180 repeals Section 250.006(b), Local Government Code, which requires a county order or municipal ordinance requiring a property owner to remove graffiti from the owner's property on receipt of notice from the county or municipality to provide that the county or municipality may not give such notice unless the county or municipality has offered to remove the graffiti from the owner's property free of charge and the property owner has refused the offer.

H.B. 4180 amends current law relating to issues affecting counties and certain other governmental entities and residents.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioners court of a county in SECTION 2 (Section 291A.053, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to a county in SECTION 2 (Section 291A.154, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Subchapter A, Chapter 264, Health and Safety Code, by adding Section 264.004, as follows:

Sec. 264.004. DISSOLUTION. (a) Authorizes the commissioners court of a county by order to dissolve a county hospital authority (authority) created by the commissioners court if the commissioners court and the authority provide for the sale or transfer of the authority's assets and liabilities to the county.

(b) Prohibits the dissolution of an authority and the sale or transfer of the authority's assets and liabilities from violating a trust indenture or bond resolution relating to the outstanding bonds of the authority or diminishing or impairing the rights of the holders of outstanding bonds, warrants, or other obligations of the authority.

(c) Provides that an order dissolving an authority takes effect on the 31st day after the date the commissioners court adopts the order.

(d) Requires that all records of the authority remaining when the authority is dissolved be transferred to the county clerk of the county in which the authority is located.

SECTION 2. Amends Subtitle D, Title 4, Health and Safety Code, by adding Chapter 291A, as follows:

CHAPTER 291A. COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM IN CERTAIN COUNTIES BORDERING OR INCLUDING THE SAM RAYBURN RESERVOIR

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 291A.001. DEFINITIONS. Defines "institutional health care provider," "paying hospital," and "program."

Sec. 291A.002. **APPLICABILITY.** Provides that this chapter applies only to a county that is not served by a hospital district or a public hospital, has a population of more than 75,000, and borders or includes a portion of the Sam Rayburn Reservoir.

Sec. 291A.003. **COUNTY HEALTH CARE PROVIDER PARTICIPATION PROGRAM; PARTICIPATION IN PROGRAM.** (a) Provides that a county health care provider participation program authorizes a county to collect a mandatory payment from each institutional health care provider (IHCP) located in the county to be deposited in a local provider participation fund established by the county. Authorizes money in the fund to be used by the county to fund certain intergovernmental transfers and indigent care programs as provided by this chapter.

(b) Authorizes the commissioners court of a county to adopt an order authorizing a county to participate in the program, subject to the limitations provided by this chapter.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSIONERS COURT

Sec. 291A.051. **LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT.** Authorizes the commissioners court of a county to require a mandatory payment authorized under this chapter by an IHCP in the county only in the manner provided by this chapter.

Sec. 291A.052. **MAJORITY VOTE REQUIRED.** Prohibits the commissioners court of a county from authorizing the county to collect a mandatory payment authorized under this chapter without an affirmative vote of a majority of the members of the commissioners court.

Sec. 291A.053. **RULES AND PROCEDURES.** Authorizes the commissioners court, after the commissioners court of a county has voted to require a mandatory payment authorized under this chapter, to adopt rules relating to the administration of the mandatory payment.

Sec. 291A.054. **INSTITUTIONAL HEALTH CARE PROVIDER REPORTING; INSPECTION OF RECORDS.** (a) Requires the commissioners court of a county that collects a mandatory payment authorized under this chapter to require each IHCP to submit to the county a copy of any financial and utilization data required by and reported to the Department of State Health Services (DSHS) under Sections 311.032 (Department Administration of Hospital Reporting and Collection System) and 311.033 (Financial and Utilization Data Required) and any rules adopted by the executive commissioner of the Health and Human Services Commission (HHSC) to implement those sections.

(b) Authorizes the commissioners court of a county that collects a mandatory payment authorized under this chapter to inspect the records of an IHCP to the extent necessary to ensure compliance with the requirements of Subsection (a).

SUBCHAPTER C. GENERAL FINANCIAL PROVISIONS

Sec. 291A.101. **HEARING.** (a) Requires the commissioners court of a county that collects a mandatory payment authorized under this chapter, each year, to hold a public hearing on the amounts of any mandatory payments that the commissioners court intends to require during the year and how the revenue derived from those payments is to be spent.

(b) Requires the commissioners court of the county, not later than the 10th day before the date of the hearing required under Subsection (a), to publish notice of the hearing in a newspaper of general circulation in the county.

(c) Provides that a representative of a paying hospital is entitled to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments authorized under this chapter.

Sec. 291A.102. DEPOSITORY. (a) Requires the commissioners court of each county that collects a mandatory payment authorized under this chapter by resolution to designate one or more banks located in the county as the depository for mandatory payments received by the county. Provides that a bank designated as a depository serves for two years or until a successor is designated.

(b) Requires all income received by a county under this chapter, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, to be deposited with the county depository in the county's local provider participation fund and provides that it is authorized to be withdrawn only as provided by this chapter.

(c) Requires that all funds under this chapter be secured in the manner provided for securing county funds.

Sec. 291A.103. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Requires each county that collects a mandatory payment authorized under this chapter to create a local provider participation fund.

(b) Provides that the local provider participation fund of a county consists of all revenue received by the county attributable to mandatory payments authorized under this chapter, including any penalties and interest attributable to delinquent payments, money received from HHSC as a refund of an intergovernmental transfer from the county to the state for the purpose of providing the nonfederal share of Medicaid supplemental payment program payments, provided that the intergovernmental transfer does not receive a federal matching payment, and the earnings of the fund.

(c) Authorizes money deposited to the local provider participation fund to be used only for certain purposes.

(d) Prohibits money in the local provider participation fund from being commingled with other county funds.

(e) Prohibits an intergovernmental transfer of funds described by Subsection (c)(1) (relating to the local provider participation fund being used to fund certain intergovernmental transfers to provide for Medicaid) and any funds received by the county as a result of an intergovernmental transfer described by that subsection from being used by the county or any other entity to expand Medicaid eligibility under the Patient Protection and Affordable Care Act (Pub. L. No. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152).

SUBCHAPTER D. MANDATORY PAYMENTS

Sec. 291A.151. MANDATORY PAYMENTS BASED ON PAYING HOSPITAL NET PATIENT REVENUE. (a) Authorizes the commissioners court of a county that collects a mandatory payment authorized under this chapter, except as provided by Subsection (e), to require an annual mandatory payment to be assessed on the net patient revenue of each IHCP located in the county. Authorizes the commissioners court to provide for the mandatory payment to be assessed quarterly. Provides that, in the first year in which the mandatory payment is required, the mandatory payment is assessed on the net patient revenue of an IHCP as determined by the data reported to DSHS under Sections 311.032 and 311.033 in the fiscal year ending in 2015 or, if the IHCP did not report any data under those sections in that fiscal year, as determined by the IHCP's Medicare cost report submitted for the 2015 fiscal year or for the closest subsequent fiscal year for which the

provider submitted the Medicare cost report. Requires the county to update the amount of the mandatory payment on an annual basis.

(b) Requires that the amount of a mandatory payment authorized under this chapter be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the county. Prohibits a mandatory payment authorized under this chapter from holding harmless any IHCP, as required under 42 U.S.C. Section 1396b(w).

(c) Requires the commissioners court of a county that collects a mandatory payment authorized under this chapter to set the amount of the mandatory payment. Prohibits the amount of the mandatory payment required of each paying hospital from exceeding an amount that, when added to the amount of the mandatory payments required from all other paying hospitals in the county, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the county.

(d) Requires the commissioners court of a county that collects a mandatory payment authorized under this chapter, subject to the maximum amount prescribed by Subsection (c), to set the mandatory payments in amounts that in the aggregate will generate sufficient revenue to cover the administrative expenses of the county for activities under this chapter, to fund the nonfederal share of a Medicaid supplemental payment program as described by Section 291A.103(c)(1) and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the county for activities under this chapter in a year is prohibited to exceed the lesser of four percent of the total revenue generated from the mandatory payment or \$20,000.

(e) Prohibits a paying hospital from adding a mandatory payment required under this section as a surcharge to a patient.

Sec. 291A.152. ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. Authorizes the county to collect or contract for the assessment and collection of mandatory payments authorized under this chapter.

Sec. 291A.153. INTEREST, PENALTIES, AND DISCOUNTS. Provides that interest, penalties, and discounts on mandatory payments required under this chapter are governed by the law applicable to county ad valorem taxes.

Sec. 291A.154. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) Provides that the purpose of this chapter is to generate revenue by collecting from IHCPs a mandatory payment to be used to provide the nonfederal share of a Medicaid supplemental payment program.

(b) Authorizes the county, to the extent any provision or procedure under this chapter causes a mandatory payment authorized under this chapter to be ineligible for federal matching funds, to provide by rule for an alternative provision or procedure that conforms to the requirements of the federal Centers for Medicare and Medicaid Services.

SECTION 3. Amends Subchapter C, Chapter 775, Health and Safety Code, by adding Section 775.0341, as follows:

Sec. 775.0341. APPOINTMENT OF BOARD IN CERTAIN DISTRICTS LOCATED IN MORE THAN ONE COUNTY. (a) Provides that this section applies only to a district that was authorized to have a board of emergency services commissioners (board) appointed under former Section 776.0345 and that is located partly in a county with a population of less than 22,000 and partly in a county with a population of more than 54,000.

(b) Provides that a five-member board appointed under this section serves as the district's governing body. Provides that a commissioner serves a two-year term.

(c) Requires the commissioners court of the smallest county in which the district is located to appoint two commissioners to the board. Requires the commissioners court of the largest county in which the district is located to appoint three commissioners to the board.

(d) Requires a person, to be eligible for appointment as an emergency services commissioner under this section, to be at least 18 years of age and reside in the district. Requires two commissioners to reside in the smallest county in which the district is located, and three commissioners to reside in the largest county in which the district is located.

(e) Requires a commissioners court, on January 1 of each year, to appoint a successor for each emergency services commissioner appointed by that commissioners court whose term has expired.

(f) Requires the appropriate commissioners court to fill a vacancy on the board for the remainder of the unexpired term.

SECTION 4. Amends Section 775.035, Health and Safety Code, by adding Subsection (j), to provide that this section does not apply to a district described by Section 775.0341.

SECTION 5. Amends Section 775.036, Health and Safety Code, by adding Subsection (a-1), as follows:

(a-1) Authorizes the board for an emergency services district (district) located wholly in a county with a population of 75,000 or less, notwithstanding Subsection (a)(1) (relating to the board holding regular monthly meetings and other meetings as necessary), by resolution, to determine to hold the board's regular meetings less frequently than prescribed by that subsection. Requires the resolution to require the board to meet either quarterly or every other month. Requires the board to meet as required by the resolution.

SECTION 6. Amends Subchapter Z, Chapter 271, Local Government Code, by adding Section 271.909, as follows:

Sec. 271.909. PURCHASES: DEVICES THAT UTILIZE ELECTRONIC CAPTURE. Requires devices that utilize electronic capture to produce a physical record, as it relates to purchases by local governmental entities and notwithstanding any provision under Texas law, to be considered interchangeable with devices that utilize electronic capture to produce an electronic record.

SECTION 7. Amends Section 81.001(b), Local Government Code, to provide that this subsection does not apply to a meeting held under Section 551.127 (Videoconference Call), Government Code, if the county judge is not located at the physical space made available to the public for the meeting.

SECTION 8. (a) Provides that all governmental acts and proceedings of an emergency services district to which former Section 776.0345, Health and Safety Code, applied before that section was repealed and that relate to the selection of emergency services commissioners of the district and that were taken between January 1, 2012, and the effective date of this Act are validated, ratified, and confirmed in all respects as if they had been taken as authorized by law.

(b) Provides that this section does not apply to any matter that on the effective date of this Act is involved in litigation if the litigation ultimately results in the matter being held invalid by a final court judgment or has been held invalid by a final court judgment.

SECTION 9. Repealer: Section 250.006(b) (relating to a certain order or ordinance prohibiting a county or municipality from giving notice to a certain property owner), Local Government Code.

SECTION 10. Requires a state agency, if necessary for implementation of a provision of Chapter 291A, Health and Safety Code, as added by this Act, to request a waiver of authorization from a federal agency, and authorizes delay of implementation until such a waiver or authorization is granted.

SECTION 11. Effective date: upon passage or September 1, 2017.