

Representative

Desk

LSG Floor Report—June 23, 2013

HB 60, HB 16, SB 5 (Abortion)

Recommendation: Unfavorable

Committee: State Affairs

Overview

Governor Perry has added abortion issues to the call of the special session.

The call reads:

Legislation relating to the regulation of abortion procedures, providers and facilities.

Under the guise of improving women's health, these bills represent an assault on women's healthcare in the state of Texas.

These bills are not based on sound evidence and will erode women's health by denying women in Texas the benefits of well-researched, safe, and proven protocols that already exist. Doctors will face extreme regulation that makes it more difficult for them to provide quality care to patients. The proposed legislation will likely result in the closure of 37 of the state's 42 abortion-related facilities, and will disproportionately impact low and moderate income populations who cannot afford to access the five facilities left standing. **This bill does not make women safer; it makes them more likely to seek an illegal abortion or self-abortion.**

Denying low and moderate income women the option to terminate an unwanted pregnancy will increase the burden on vulnerable families who already struggle to afford life's basic necessities and cannot afford to support another child. It will also increase the economic costs to the state, as families turn to government support to feed, educate, and maintain the healthcare of these children.

The LSG recommendation for all of these anti-choice bills is unfavorable.

HB 60 by Rep. Laubenberg

HB 60 and its identical companion SB 5 are the main vehicles for anti-choice legislation.

The bill states that fetal pain is detectable at 20 weeks of gestation and bans abortion at or after 20 weeks. Limiting the period to have an abortion to 20 weeks is unfavorable, possibly unconstitutional, and violative of women's health. This timeline interferes with a doctor's ability to determine appropriate medical care in each patient's unique circumstances.

The bill would require doctors performing an abortion to have admitting privileges to a hospital within 30 miles, requires a prescription for medical abortion, and would unnecessarily enhance strict minimum standards for abortion facilities. The 30-mile radius contingency is especially problematic for rural areas where hospitals are scarce.

This bill requires the minimum standards for an abortion facility to be equivalent to the standards for Ambulatory Surgical Centers (ASC). Abortions performed after 16+ weeks of gestation are already required to be performed in an ASC. This provision is unnecessary and would likely reduce access and increase costs of safe, legal facilities.



The bill would also require a woman to be physically present at an ASC to take a pill for a medical abortion. She would then have to return a second time to the ASC to be watched taking the 2nd pill within the next 24-48 hours. Requiring a woman to physically return for the second dose increases risk of her being unable to return, travel, or pay for hotel accommodations and increases medical risks for complications.

This bill creates medical protocol for physicians and dictates what to document, what tests to perform, what medications to prescribe and when to schedule follow-up appointments. The legislature should not be practicing medicine and interfering with doctor-patient relationships.

The American Congress of OB/GYNs, Texas Medical Association, and Texas Hospital Association oppose this bill.

Recommendation: Unfavorable

HB 16 by Rep. Laubenberg

This bill focuses on prohibiting elective abortions for pregnancies at or after 20 weeks of gestation. It states that fetuses are capable of experiencing pain beginning at this stage of pregnancy.

A physician may not perform an abortion procedure without determining whether the probable post-fertilization age of the fetus is at or under 20 weeks of age, or relying on the findings of another doctor who determined the probable fetus age.

The bill provides an exemption for circumstances in which a physician determines that the late-term abortion is necessary to avoid death or substantial and irreversible bodily harm to bodily functions of a pregnant woman. In these cases, the bill mandates that the physician must approach the treatment with a method that “provides the best opportunity for the unborn child to survive.” An exemption is also created for an unborn child with severe abnormality that cannot survive outside the womb regardless of possible lifesaving medical treatment.

Recommendation: Unfavorable

SB 5 by Sen. Hegar

See analysis for identical companion HB 60.

Recommendation: Unfavorable

Senate Joint Resolution 2 (Transportation)

Author: Sen. Nichols

Sponsor: Rep. Phillips

Recommendation: **Will of the House with Concerns**

Committee: Appropriations

Background

Governor Perry added legislation relating to transportation funding to the call of the special session. Specifically, the call reads:

Legislation relating to the funding of transportation infrastructure projects.



During the 83rd Regular Session, the Texas Department of Transportation (TxDot) stated that it needs an extra \$4 billion annually for transportation just to maintain existing levels of congestion on Texas' roads. An additional \$1.6 billion was requested to address road repairs in rural areas of the state under heavy use due to energy development. Of the \$9.6 billion requested, the Legislature appropriated \$850 million – \$450 million for roads in booming shale areas, and \$400 million for general transportation for the two-year budget cycle. Additionally, lawmakers passed several bills to allow for local communities to build roads with tolls and debt.

Analysis

SJR 2 is a constitutional amendment that would create a permanent redirection of half of all future Rainy Day Fund dollars to the State Highway fund.

The ballot language for SJR 2 would read as follows:

“The constitutional amendment to provide for the transfer of certain general revenue to the economic stabilization fund, to provide for the transfer of certain general revenue to the state highway fund and the dedication of that revenue, and to authorize the payment of the principal and interest in certain highway improvement bonds from other money deposited to the state highway fund.”

SJR 2 states that of the existing dollars currently transferred to the Rainy Day Fund, 50% would go to the Rainy Day Fund as it traditionally does, while the other 50% would automatically be redirected to the State Highway Fund. The fiscal note for SJR 2 states that this would generate approximately \$889 million more for the 2014-2015 biennium, with none of those dollars available until September 1, 2014 – at the end of the 2014 fiscal year.

The Senate added a provision to SJR 2 to create a \$6 billion floor in the Rainy Day Fund. Specifically, the language says that if the amount available in the Rainy Day Fund dips below \$6 billion, the dollars redirected to the State Highway Fund would be returned to the Rainy Day Fund. The push to create a minimum amount in the Rainy Day Fund is based on unfounded concerns by some lawmakers that a specific amount must be kept in the Rainy Day Fund to protect the state's credit ratings. However, neither the Texas Comptroller nor any credit agency has stated what such an amount may be, and the state has completely depleted the Rainy Day Fund in past legislative sessions without any threat to the state's credit ratings.

If SJR 2 passes, half of all future Rainy Day Fund money would be untouchable to lawmakers for any measure, thereby limiting the legislature's ability to stabilize economic services wherever it is needed most in the future. By forever removing half of the money available to lawmakers for future emergency appropriations, the state would be forfeiting significant control of a major appropriation tool without any guarantee that the dollars spent from the Rainy Day Fund would not merely supplant general revenue investments.

The state of Texas does not collect enough revenue to maintain investments in education, health care, water, transportation, and other crucial state services. SJR 2 creates no new revenue for the state; instead, it redirects existing dollars the state would already have access to and could already appropriate for transportation.

With nearly \$12 billion projected to be in the state's Rainy Day Fund by the end of fiscal year 2015, the state would do much better to simply appropriate \$2 billion straight out of the Rainy Day Fund into transportation – over twice the amount possible under SJR 2 – and use the interim months to gather support for a more permanent revenue stream to increase investments in transportation.



Senate Concurrent Resolution 2

Author: Sen. Duncan

Sponsor: Rep. Raymond

Recommendation: **Favorable**

Committee: Human Services

SCR2 approves an interim agreement entered into by parties of a lawsuit brought against Governor Perry, the Health & Human Services Commission, and the Department of Aging and Disability Services by plaintiffs including the Arc of Texas, the Coalition of Texans with Disabilities, and other individuals. The lawsuit makes claims under the Americans with Disabilities Act, the Rehabilitation Act of 1973, and several sections of Title XIX of the Social Security Act.

The plaintiffs of *Steward v. Perry* complain of the state's Pre-Admission Screening and Resident Review (PASRR) process for individuals in or seeking admission to nursing facilities. Pre-Admission Screening and Resident Review is a federally mandated process for individuals who are seeking admission to or who already reside in a nursing facility.

Specifically, the plaintiffs have made the following claims:

- They were not adequately screened for intellectual and developmental disabilities (IDD) before their admission to the nursing facility and are not periodically reviewed as required by federal law.
- They are not afforded specialized services designed to meet their specific needs in the nursing facility.
- They are unjustifiably segregated, because they could be living in the community with adequate supports, like waiver program services.

The U.S. Department of Justice has intervened in the case and Attorney General Greg Abbott has advised the Legislature that state law requires legislative approval in order for an agreement in this case to take effect.

The parties have been in settlement negotiations for over a year and have reached consensus on most but not all of the issues. An agreement has not been reached on some important issues, including the structure of a comprehensive agreement. Given the time limitations of the Legislative Session and Special Session, parties agreed to first work towards a temporary interim agreement and then work towards a long-term comprehensive agreement.

The interim agreement includes issues that all parties have agreed upon and sets a timeline and framework for negotiating a comprehensive agreement. If approved, the Interim agreement will take effect as soon as it is signed by all parties and will terminate on July 1, 2015. Any Comprehensive Agreement would require legislative approval by the 84th Legislature.