

BILL ANALYSIS

Senate Research Center

H.B. 14
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Finance
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, there is no cancer institute in Texas that provides grant money for cancer research. The Texas Cancer Council focuses on cancer prevention programs, but operates on a much smaller scale and does not grant funding for research projects.

H.B. 14 redesignates the Texas Cancer Council as the Cancer Prevention and Research Institute of Texas. This bill authorizes the institute to issue general obligation bonds for grants to create and expedite innovation in the area of cancer research and prevention to enhance the potential for a medical or scientific breakthrough in the prevention of cancer and cures for cancer.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Cancer Prevention and Research Institute of Texas Oversight Committee in SECTION 4 (Section 102.106, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

[While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services, as the successor agency to TDH.]

SECTION 1. Amends the heading to Chapter 86, Health and Safety Code, to read as follows:

CHAPTER 86. BREAST CANCER AND LUNG CANCER

SECTION 2. Amends Chapter 86, Health and Safety Code, by adding Subchapter C, as follows:

SUBCHAPTER C. INFORMATION ON ALTERNATIVE TREATMENTS FOR LUNG CANCER

Sec. 86.101. PURPOSE. Provides that it is the intent of the legislature that lung cancer patients have access to a standardized written summary, as provided under this subchapter, of medically efficacious and viable alternative treatments for lung cancer which may include surgical, radiological, or chemotherapeutic treatment or combinations of those treatments.

Sec. 86.102. STANDARDIZED WRITTEN SUMMARY. Requires the Texas Department of Health (TDH) to publish a standardized written summary, in language a patient can understand, of the advantages, disadvantages, risks, and descriptions of all medically efficacious and viable alternatives for the treatment of lung cancer. Requires TDH to update the summary annually, if necessary, to reflect changes in the treatment of lung cancer. Requires the advisory council to develop the summary.

Sec. 86.103. ADVISORY COUNCIL. Provides that the lung cancer advisory council is appointed by the executive commissioner of the Health and Human Services Commission (HHSC). Sets forth the composition of the lung cancer advisory council.

Sec. 86.104. DISTRIBUTION OF SUMMARY. Requires TDH, not later than the 90th day after the date TDH receives the standardized written summary from the advisory

council, to print and make available to all physicians in the state sufficient copies of the summary. Authorizes a physician to distribute the summary to a patient when the physician determines in the physician's professional judgment that it is in the best interest of the patient to receive a copy of the summary.

Sec. 86.105. FUNDING. Prohibits TDH from expending general revenue funds for the publication or distribution of the standardized written summary. Authorizes TDH to provide technical assistance to the advisory council to aid in the development of the summary. Authorizes TDH to accept grants, donations of money or materials, and other forms of assistance from private and public sources to be used solely for the development and distribution of the summary.

SECTION 3. Amends Section 86.003(b), Health and Safety Code, to redesignate the Texas Cancer Council as the Cancer Prevention and Research Institute of Texas.

SECTION 4. Amends Chapter 102, Health and Safety Code, as follows:

CHAPTER 102. New heading: CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.001. New heading: DEFINITIONS. Defines "institute," "oversight committee," and "research and prevention programs committee." Deletes existing definition of "council."

Sec. 102.002. New heading: PURPOSES. Establishes the Cancer Prevention and Research Institute of Texas (institute), rather than the Texas Cancer Council, to perform certain tasks.

Sec. 102.003. SUNSET PROVISION. Provides that the institute is abolished and this chapter expires September 1, 2021, rather than September 1, 2009, unless continued in existence as provided by Chapter 325, Government Code (Texas Sunset Act). Makes conforming changes.

SUBCHAPTER B. POWERS AND DUTIES OF INSTITUTE

Sec. 102.051. POWERS AND DUTIES. (a) Authorizes the institute to take certain actions and perform certain tasks.

(b) Requires the institute to work to implement the Texas Cancer Plan and continually monitor and revise the Texas Cancer Plan as necessary.

Sec. 102.052. ANNUAL PUBLIC REPORT. (a) Requires the institute to issue an annual public report outlining the institute's activities, grants awarded, grants in progress, research accomplishments, and future program directions. Requires the report to include certain information.

(b) Requires the institute to submit the annual public report to the governor and the legislature.

Sec. 102.053. INDEPENDENT FINANCIAL AUDIT FOR REVIEW BY COMPTROLLER. (a) Requires the institute to annually commission an independent financial audit of its activities from a certified public accounting firm and to provide the audit to the comptroller of public accounts (comptroller). Requires the comptroller to review and evaluate the audit and annually issue a public report of that review and to make recommendations concerning the institute's financial practices and performance.

(b) Requires the committee to review the annual financial audit, the comptroller's report and evaluation of that audit, and the financial practices of the institute.

Sec. 102.054. GIFTS AND GRANTS. Authorizes the institute to solicit and accept gifts and grants from any source for the purposes of this chapter.

Sec. 102.055. QUARTERLY MEETINGS. Requires the Cancer Prevention and Research Institute of Texas Oversight Committee (oversight committee) to hold a public meeting at least once in each quarter of the calendar year, with appropriate notice and with a formal public comment period.

SUBCHAPTER C. OVERSIGHT COMMITTEE

Sec. 102.101. New heading: COMPOSITION OF OVERSIGHT COMMITTEE. (a) Provides that the oversight committee is the governing body of the institute. Redesignates Section 102.004 as Section 102.101.

(b) Sets forth the composition of the 11-member oversight committee.

(c) Requires the members of the oversight committee to represent the geographic and cultural diversity of the state.

(d) Provides that the governor, lieutenant governor, and speaker of the house of representatives should attempt to include cancer survivors and family members of cancer patients in making appointments to the oversight committee, rather than the council, if possible.

(e) Prohibits a person from being a member, rather than a public member, of the oversight committee under certain circumstances.

Sec. 102.102. REMOVAL. Provides certain grounds for removal from the oversight committee.

Sec. 102.103. TERMS; VACANCY. (a) Provides that oversight committee members appointed by the governor, lieutenant governor, and speaker of the house serve four-year terms, rather than six-year terms, with the terms of four or five members expiring February 1 of each year. Deletes existing text providing that council members serve for staggered six-year terms, with the terms of five members expiring February 1 of each even-numbered year, except for the ex officio member of the council.

(b) Requires the appropriate appointing authority to appoint a replacement not later than the 30th day after the date an oversight committee member's term expires.

(c) Requires the appropriate appointing authority to appoint a successor, in the same manner as the original appointment, to serve for the remainder of the unexpired term if a vacancy occurs on the oversight committee. Requires the appropriate appointing authority to appoint the successor not later than the 30th day after the date the vacancy occurs. Deletes existing text requiring the appropriate appointing authority to appoint, in the same manner as the original appointment, a person to serve for the remainder of the unexpired term if a vacancy occurs.

Sec. 102.104. OFFICERS. Requires the oversight committee to select a presiding officer from among its members. Deletes existing text requiring the governor to designate a member of the council, other than the ex officio member, as the presiding officer of the council to serve in that capacity at the pleasure of the governor.

Sec. 102.105. New heading: EXPENSES. Provides that a member of the oversight committee is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in attending meetings of the oversight committee or performing other official, rather than council, duties authorized by the presiding officer. Makes a conforming change.

(b) Deletes existing subsection relating to reimbursements.

Sec. 102.106. CONFLICT OF INTEREST. Requires the oversight committee to adopt conflict-of-interest rules, based on standards applicable to members of scientific review committees of the National Institutes of Health, to govern members of the oversight committee.

Sec. 102.107. POWERS AND DUTIES. Requires the oversight committee to hire an executive director.

SUBCHAPTER D. RESEARCH AND PREVENTION PROGRAMS COMMITTEE

Sec. 102.151. SCIENTIFIC RESEARCH AND PREVENTION PROGRAMS COMMITTEE. (a) Sets forth the composition of the Cancer Prevention and Research Institute of Texas Scientific Research and Prevention Programs Committee (research committee).

(b) Authorizes individuals appointed to the research committee to be residents of another state.

(c) Requires the members of the research committee to represent the geographic and cultural diversity of the state.

Sec. 102.152. TERMS OF RESEARCH AND PREVENTION PROGRAMS COMMITTEE MEMBERS. Provides that the members of the research committee serve four-year terms.

Sec. 102.153. EXPENSES. Provides that members of the research committee serve without compensation but entitles research committee members to reimbursement for actual and necessary expenses in attending meetings of the research committee or performing other official duties authorized by the presiding officer.

SUBCHAPTER E. CANCER PREVENTION AND RESEARCH FUND

Sec. 102.201. CANCER PREVENTION AND RESEARCH FUND. (a) Provides that the cancer prevention and research fund (fund) is a dedicated account in the general revenue fund.

(b) Sets forth certain money comprising the fund.

(c) Authorizes the fund to be used only for certain purposes.

Sec. 102.202. ISSUANCE OF GENERAL OBLIGATION BONDS. (a) Authorizes the institute to request the Texas Public Finance Authority (authority) to issue and sell general obligation bonds of the state as authorized by Section 67, Article III, Texas Constitution.

(b) Prohibits the authority from issuing and selling general obligation bonds authorized by this section before January 1, 2008, and prohibits the authority from issuing and selling more than \$300 million in general obligation bonds authorized by this section in a state fiscal year.

(c) Requires the institute to determine, and include in its request for issuing bonds, the amount, exclusive of costs of issuance, of the bonds to be issued and the preferred time for issuing the bonds.

(d) Requires the authority to issue the bonds in accordance with and subject to Chapter 1232 (Texas Public Finance Authority), Government Code, and authority rules. Authorizes the bonds to be issued in installments.

(e) Requires proceeds of the bonds issued under this section to be deposited in separate funds or accounts, in the state treasury, as shall be set out in the proceedings authorizing the bonds.

(f) Authorizes proceeds of the bonds issued under this section to be used only for certain purposes set forth in this subsection.

Sec. 102.203. AUTHORIZED USE OF FUNDS. (a) Authorizes a person awarded money from the fund or from bond proceeds under this subchapter to use the money for research consistent with the purpose of this chapter and in accordance with a contract between the person and the institute.

(b) Authorizes money awarded under this subchapter to be used for certain authorized expenses, except as otherwise provided by this section.

(c) Prohibits a person receiving money under this subchapter from spending more than five percent of the money for indirect costs.

(d) Authorizes not more than five percent of the money awarded under this subchapter to be used for facility construction purposes during any year.

(e) Authorizes not more than 10 percent of the money awarded under this subchapter to be used for cancer prevention and control programs during any year.

Sec. 102.204. PREFERENCE FOR TEXAS BUSINESSES. Requires the authority, if it contracts with a private entity to issue the bonds under this subchapter, to consider contracting with an entity that has its principal place of business in this state and to include using a historically underutilized business as defined by Section 2161.001 (Definitions), Government Code.

SUBCHAPTER F. PROCEDURE FOR MAKING AWARDS

Sec. 102.251. DUTIES OF SCIENTIFIC RESEARCH AND PREVENTION PROGRAMS COMMITTEE. (a) Requires the research committee to review grant and loan applications and make recommendations to the oversight committee regarding the award of research, therapy development, and clinical trial grants.

(b) Authorizes the ex officio members of the research committee to participate in the review and discussion of grant applications. Prohibits ex officio members from voting on recommendations to the oversight committee. Requires the research committee to give priority to certain proposals in making recommendations to the oversight committee.

(c) Prohibits a member of the research committee from attempting to use the committee member's official position to influence a decision to approve or award a grant or contract to the committee member's employer.

Sec. 102.252. OVERRIDING RESEARCH AND PREVENTION PROGRAMS COMMITTEE RECOMMENDATIONS. Requires the oversight committee to follow the funding recommendations of the research committee unless two-thirds of the members of the oversight committee vote to disregard a recommendation.

Sec. 102.253. MAXIMUM AMOUNT OF ANNUAL AWARDS. Prohibits the oversight committee from awarding more than \$300 million in grants under Subchapter E in a fiscal year.

Sec. 102.254. PERIOD FOR AWARDS. Prohibits the oversight committee from awarding money under Subchapter E before January 1, 2008, or after August 31, 2020.

Sec. 102.255. CONTRACT TERMS. (a) Requires the oversight committee to negotiate on behalf of the state regarding awarding, by grant, money under this chapter.

(b) Requires the oversight committee to enter into a written contract with the grant recipient before awarding a grant under Subchapter E. Authorizes the contract to contain certain specifications.

(c) Requires the contract to include terms relating to intellectual property rights consistent with the standards developed by the oversight committee under Section 102.256.

(d) Requires the recipient of a grant, before the oversight committee is authorized to make any grant of any proceeds of the bonds issued under Subchapter E, to have an amount of funds equal to one-half of the grant dedicated to the research that is the subject of the grant request.

Sec. 102.256. PATENT ROYALTIES AND LICENSE REVENUES PAID TO STATE.

(a) Requires the oversight committee to establish standards that require all grant awards to be subject to an intellectual property agreement that allows the state to collect royalties, income, and other benefits realized as a result of projects undertaken with money awarded under Subchapter E.

(b) Requires the oversight committee, in determining the state's interest in any intellectual property rights, to balance the opportunity of the state to benefit from the patents, royalties, licenses, and other benefits that result from basic research, therapy development, and clinical trials with the need to ensure that essential medical research is not unreasonably hindered by the intellectual property agreement and that the agreement does not unreasonably remove the incentive on the part of the individual researcher, research team, or institution.

Sec. 102.257. MULTIYEAR PROJECTS. Authorizes the oversight committee to grant funds for a multiyear project. Requires all the money needed to fund a multiyear project to be awarded in the state fiscal year that the project is approved by the research committee. Requires the institute to distribute only the money that will be expended during that fiscal year. Requires the remaining money to be maintained in an escrow account to be distributed by the institute in subsequent years of the project.

Sec. 102.258. PREFERENCE FOR TEXAS SUPPLIERS. Requires the oversight committee to establish standards to ensure that grant recipients purchase goods and services from suppliers in this state to the extent reasonably possible, in a good faith effort to achieve a goal of more than 50 percent of such purchases from suppliers in this state.

Sec. 102.259. HISTORICALLY UNDERUTILIZED BUSINESSES. Requires the oversight committee to establish standards to ensure that grant recipients purchase goods and services from historically underutilized businesses as defined by Chapter 2161, Government Code, and any other applicable state law.

Sec. 102.260. PEER REVIEW. Requires the research committee to require a peer review progress oversight review of each grant recipient to ensure compliance with the terms of the award and to ensure the scientific merit of the research. Requires the research committee to report to the oversight committee any recommendations for subsequent actions.

Sec. 102.261. MEDICAL ETHICS. Requires any research project that receives money under Subchapter E to be conducted with full consideration for the ethical and medical implications of the research, and to comply with all federal and state laws regarding the conduct of research.

Deletes existing Section 102.008 (MEETINGS).

Deletes existing Section 102.009 (POWERS AND DUTIES OF COUNCIL).

Deletes existing Section 102.010 (GRANT PROGRAM).

Deletes existing Section 102.011 (STANDARDS OF CONDUCT).

Deletes existing Section 102.012 (CANCER RESOURCE FUND).

Deletes existing Section 102.013 (TRAINING).

Deletes existing Section 102.014 (SEPARATION OF RESPONSIBILITIES).

Deletes existing Section 102.015 (COMPLAINTS).

Deletes existing Section 102.016 (EQUAL EMPLOYMENT OPPORTUNITY).

Deletes existing Section 102.017 (TEXANS CONQUER CANCER ACCOUNT).

Deletes existing Section 102.018 (TEXANS CONQUER CANCER ADVISORY COMMITTEE).

SECTION 5. Amends Section 504.017, Labor Code, as follows:

Sec. 504.017. FEDERAL AND STATE FUNDED TRANSPORTATION ENTITIES. Provides that an entity is eligible to participate under Section 504.016 (Joint Insurance Fund) or Chapter 791 (Interlocal Cooperation Contracts) or 2259 (Self-Insurance By Governmental Units), Government Code, if the entity provides transportation subsidized in whole or in part by and provided to clients of certain agencies.

SECTION 6. Amends Section 504.620, Transportation Code, as follows:

Sec. 504.620. TEXANS CONQUER CANCER LICENSE PLATES. (a) Requires the Texas Department of Transportation (TxDOT) to issue specialty license plates that include the words "Texans Conquer Cancer." Makes a conforming change.

(b) Requires the remainder of the fee for issuance of the license plates, after deduction of TxDOT's administrative costs, to be deposited to the credit of the fund, established by Section 102.201, Health and Safety Code, rather than the Texans Conquer Cancer account, established by Section 102.017, Health and Safety Code.

SECTION 7. Repealer: Section 86.011(c) (relating to coordination with the Office of Rural Community Affairs), Health and Safety Code.

SECTION 8. (a) Requires the appropriate appointing authority, not later than December 1, 2007, to appoint the members to the oversight committee as required by Section 102.101, Health and Safety Code, as added by this Act. Prohibits the oversight committee from taking action until a majority of the appointed members have taken office.

(b) Requires the governor and the other appointing authorities specified by Section 102.151, Health and Safety Code, as added by this Act, not later than December 1, 2007, to appoint the members to the research committee as required by that section. Prohibits the research committee from taking action until a majority of the appointed members have taken office.

SECTION 9. (a) Abolishes the Texas Cancer Council and transfers all powers, duties, obligations, rights, contracts, leases, records, property, and unspent and unobligated appropriations and other funds to the institute on the date on which a majority of the initial appointed members of the oversight committee have taken office.

- (b) Provides that the reorganization of the Texas Cancer Council does not affect certain actions taken by or in connection with the Texas Cancer Council.
- (c) Provides that all rules, policies, procedures, and decisions of the Texas Cancer Council are continued in effect as rules, policies, procedures, and decisions of the institute until superseded by a rule or other appropriate action of the institute.
- (d) Provides that any action or proceeding before the Texas Cancer Council is transferred without change in status to the institute, and that the institute assumes, without a change in status, the position of the Texas Cancer Council in any action or proceeding to which the Texas Cancer Council is a party.
- (e) Provides that an employee of the Texas Cancer Council employed on the effective date of this Act automatically becomes an employee of the institute to exercise the powers and perform the duties transferred under this section. Authorizes the institute to employ the same number of full-time equivalent employees as the Texas Cancer Council to exercise the powers and perform the duties transferred under this section. Provides that the executive director of the Texas Cancer Council serving on the effective date of this Act does not automatically become the executive director of the institute. Requires a person to apply for the position and requires the person's employment in that capacity to be approved by the committee for the person to become the executive director of the institute.
- (f) Provides that a fund, foundation, or account administered by the Texas Cancer Council is not considered to be abolished and re-created by this Act but is considered to be transferred to the institute.
- (g) Requires the Texas Cancer Council to continue to exercise the powers and perform the duties assigned to the Texas Cancer Council under the law as it existed immediately before the effective date of this Act or as modified by another Act of the 80th Legislature, Regular Session, 2007, that becomes law, and provides that the former law is continued in effect for that purpose, until the date the Texas Cancer Council is reorganized into the institute as provided by Subsection (a) of this section.

SECTION 10. Requires any amount remaining in or payable to the credit of the cancer resource fund under Section 102.012, Health and Safety Code, and the Texans Conquer Cancer account under Section 102.017, Health and Safety Code, as those sections existed before repeal by this Act, to be transferred to the credit of the fund established under Section 102.201, Health and Safety Code, as added by this Act on or after the effective date of this Act.

SECTION 11. Provides that this Act takes effect on the date on which the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, establishing the institute is approved by the voters. Provides that if that amendment is not approved by the voters, this Act has no effect.