

BILL ANALYSIS

CSHB 14
By: Keffer, Jim
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

TEXAS CANCER COUNCIL: CANCER FACTS

- Cancer is not a single disease, but actually represents more than 100 distinct diseases
- More than 77,000 Texans develop cancer each year
- More than 35,000 Texans die each year of cancer
- Cancer is the #2 killer of Texans, accounting for one of every four deaths
- Cancer is the leading cause of death for Texas women ages 35-74
- Cancer is the second-leading cause of death for Texas men ages 45-74

A report titled *The Cost of Cancer in Texas: A Report to the Texas Comprehensive Cancer Control Coalition on the Economic Impact of Cancer* by The Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin and the Texas Health Care Information Council found that the total estimated direct medical costs due to cancer in 1998 were \$4.9 billion, and indirect costs from lost productivity were \$9.1 billion – for a total of about \$14.0 billion attributable to cancer in Texas that year.

CSHB 14 transforms the Texas Cancer Council into the Cancer Prevention and Research Institute of Texas, and grants authority to issue \$3 billion in 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

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

The bill conforms various statutes to replace the term "Texas Cancer Council" with the term "Cancer Prevention and Research Institute of Texas."

The bill creates the Cancer Prevention and Research Institute of Texas (Institute) to replace the Texas Cancer Council, and to create and expedite innovation in the area of cancer research and enhance the potential for a medical or scientific breakthrough in the prevention of cancer and cures for cancer. The Institute will also work to attract, create, or expand research capabilities of public or private institutions of higher education and other public or private entities that will promote a substantial increase in cancer research and in the creation of high-quality new jobs in this state; and will develop and implement the Texas Cancer Plan.

The bill sunsets the Institute on September 1, 2021.

The bill allows the Institute to make grants to public or private persons to implement the Texas Cancer Plan, and to institutions of learning and to advanced medical research facilities and collaborations in this state for:

- (A) research into the causes of and cures for all forms of cancer in humans;
- (B) facilities for use in research into the causes of and cures for cancer; and
- (C) research, including translational research, to develop therapies, protocols, medical pharmaceuticals, or procedures that will result in, as speedily as possible, the cure for, or substantial mitigation of, all types of cancer in humans.

The bill allows the Institute to support institutions of learning and advanced medical research facilities and collaborations in this state in all stages in the process of finding the causes of all types of cancer in humans and developing cures, from laboratory research to clinical trials and including programs to address the problem of access to advanced cancer treatment.

The bill allows the Institute to establish the appropriate standards and oversight bodies to ensure the proper use of funds authorized under this chapter for cancer research and facilities development.

The bill allows the Institute to employ an executive director as determined by the oversight committee, employ necessary staff to provide administrative support, and monitor authorized contracts and agreements.

The bill states that the Institute shall work to implement the Texas Cancer Plan and continually monitor and revise the Texas Cancer Plan as necessary.

The bill directs that the Institute must issue an annual report, and sets forth certain items that must be included in the report. The annual report must be submitted to the governor and the legislature.

The bill directs that the Institute must annually commission an independent financial audit of its activities from a certified public accounting firm, and provide the report to the comptroller who shall review the audit and issue a public report about that review. The oversight committee shall review the annual financial audit, the comptroller's report and evaluation of that audit, and the financial practices of the Institute.

The bill allows the Institute to solicit and accept gifts and grants from any source.

The bill creates an oversight committee to serve as the governing body of the Institute, and provides for the composition, qualifications, terms, duties, and operation of the committee, and requires the committee to meet at least once a quarter of a calendar year.

The bill creates a scientific research and prevention programs committee and provides for the composition, qualifications, terms, duties, and operation of the committee.

The bill establishes the Cancer Prevention and Research Fund as a dedicated account in the general revenue fund, lists the contents of the fund, and sets forth for administration of the fund.

The bill allows that the Institute may request the Texas Public Finance Authority to issue and sell general obligation bonds of the state, as authorized by the Texas Constitution, and sets forth a timeline, certain procedures, certain restrictions on the amount to be sold, and how the proceeds can be used.

The bill sets forth the procedure for making awards of funds.

The bill states that the oversight committee must follow the funding recommendations of the scientific research and prevention programs committee unless two-thirds of the members of the oversight committee vote to disregard a recommendation.

The bill states that the oversight committee shall establish standards that require all grants and loan 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.

The bill allows for funding of multiyear projects, creates a preference for Texas suppliers, requires a peer review of each grant recipient to ensure compliance with the terms of the award, and states that any research project that receives money must be conducted with full consideration for the ethical and medical implications of the research and comply with all federal and state laws regarding the conduct of research.

The bill states that proceeds from the Texans Conquer Cancer License Plates shall be deposited into the cancer prevention and research fund.

The bill sets forth a timeline for making appointments.

The bill dissolves the Texas Cancer Council and transfers all powers, duties, obligations, rights, contracts, leases, records, property, and unspent and unobligated appropriations and other funds of the Texas Cancer Council to the Cancer Prevention and Research Institute of Texas.

The bill states that the reorganization of the Texas Cancer Council into the Cancer Prevention and Research Institute of Texas does not affect the validity of a right, privilege, or obligation accrued, a contract or acquisition made, any liability incurred, a permit or license issued, any penalty, forfeiture, or punishment assessed, a rule adopted, a proceeding, investigation, or remedy begun, a decision made, or other action taken by or in connection with the Texas Cancer Council.

The bill states that all rules, policies, procedures, and decisions of the Texas Cancer Council are continued in effect as rules, policies, procedures, and decisions of the Cancer Prevention and Research Institute of Texas until superseded by a rule or other appropriate action of the Cancer Prevention and Research Institute of Texas.

The bill states that any action or proceeding before the Texas Cancer Council is transferred without change in status to the Cancer Prevention and Research Institute of Texas, and the Cancer Prevention and Research Institute of Texas 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.

The bill states that an employee of the Texas Cancer Council employed on the effective date of this Act automatically becomes an employee of the Cancer Prevention and Research Institute of Texas to exercise the powers and perform the duties transferred under this section. 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 Cancer Prevention and Research Institute of Texas. To become the executive director of the Cancer Prevention and Research Institute of Texas, a person must apply for the position and the person's employment in that capacity must be approved by the oversight committee.

The bill states 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 Cancer Prevention and Research Institute of Texas.

The bill states that until the date the Texas Cancer Council is abolished, the Texas Cancer Council shall 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 the former law is continued in effect for that purpose.

The bill states that on or after the effective date, any amount remaining in or payable to the credit of the cancer resource fund and the Texans Conquer Cancer account shall be transferred to the credit of the cancer prevention and research fund.

This Act takes effect on the date on which the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, establishing the Cancer Prevention and Research Institute of Texas is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

EFFECTIVE DATE

This Act takes effect on the date on which the constitutional amendment proposed by the 80th Legislature, Regular Session, 2007, establishing the Cancer Prevention and Research Institute of Texas is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute alters the caption.

The substitute alters the name of the "Cancer Research Institute of Texas" to the "Cancer Prevention and Research Institute of Texas" and makes conforming changes.

The original bill allowed the Institute to issue grants and loans, while the substitute deletes references to the term "loans."

The substitute specifically allows grants to be provided to fund public or private persons to implement the Texas Cancer Plan, while the original was less clear regarding this matter.

The substitute includes a reference to allow funds to be spent for translational research. While the original bill did not disallow this money to be spent for translational research, some groups asked for a specific reference to "translational research" to be included in the substitute.

The original bill required the annual report to include a summary of any public comments provided at the oversight committee's annual meeting. The substitute deletes this requirement.

The original bill allowed the governor to appoint nine members of the oversight committee, three of which were to be selected from a list provided by the lieutenant governor and three of which were to be selected from a list provided by the speaker of the house of representatives, while the substitute divides the appointments amongst the governor, lieutenant governor, and speaker of the house of representatives.

The original bill included that a position on the oversight committee should go to the state auditor or the state auditor's designee, while the substitute replaces this position with the governor or the governor's designee.

The substitute increases the terms of the oversight committee to four years, and deletes the staggering of terms.

The substitute alters the name of the "scientific research committee" to the "scientific research and prevention programs committee."

The original bill allowed the governor to appoint all nine voting members of the research committee, while the substitute divides the appointments of the voting members of the scientific research and prevention programs committee amongst the governor, lieutenant governor, and speaker of the house of representatives; and specifies certain criteria the appointees must meet.

The substitute increases the terms of the scientific research and prevention programs committee to four years, and deletes the staggering of terms.

Because the bond proceeds can be used by both private (including private nonprofits) and governmental entities, some bonds may be eligible for tax exempt financing under federal tax law, which will reduce costs to the state. By allowing proceeds of the bonds issued to be deposited in separate funds or accounts in the state treasury, this will allow the Institute to make authorized expenditures from those accounts while allowing the Texas Public Finance Authority to "carve out" what would qualify for tax-exempt and taxable debt prior to each debt issuance. Therefore, while the original bill had language that allowed the Texas Public Finance Authority to issue and sell general obligation bonds, provided certain restrictions, and stated that the proceeds of the bonds be deposited in the cancer research fund; the substitute includes language providing for the issuance of general obligation bonds as follows:

- The institute may request the Texas Public Finance Authority to issue and sell general obligation bonds of the state as authorized by the Texas Constitution.

- The Texas Public Finance Authority may not issue and sell general obligation bonds authorized by this section before September 1, 2009, and may not issue and sell more than \$300 million in general obligation bonds authorized in a state fiscal year.
- The institute shall 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.
- The Texas Public Finance Authority shall issue the bonds in accordance with and subject to Chapter 1232, Government Code, and Texas Public Finance Authority rules. The bonds may be issued in installments.
- Proceeds of the bonds issued under this section shall be deposited in separate funds or accounts, in the state treasury, as shall be set out in the proceedings authorizing the bonds.
- The proceeds of the bonds may be used only to:
 - (1) make grants authorized by Section 67, Article III, Texas Constitution;
 - (2) purchase laboratory facilities approved by the institute;
 - (3) pay costs of operating the institute; or
 - (4) pay the costs of issuing the bonds and related bond administration costs of the Texas Public Finance Authority.

The original bill provided that a person receiving money may not spend more than five percent of the money for administrative purposes, while the substitute states that a person receiving money may not spend more than five percent of the money for indirect costs.

The original bill provided that a person receiving money may not spend more than 10 percent of the money for facility construction purposes, and that the money may not be used for facility construction five years after the date the money is awarded. The substitute provides that not more than 10 percent of the money awarded may be used for facility construction purposes during any year.

The substitute add additional language to allow that not more than five percent of the money awarded may be used for cancer control programs during any year.

The substitute deletes language from the original bill that stated the administration of the cancer research fund is considered to be a trustee program within the office of the governor.

The original bill specifically authorized the Institute to employ the same number of full-time equivalent employees as the Texas Cancer Council, though it also stated that an employee of the Texas Cancer Council employed on the effective date of the Act did not automatically become an employee of the Institute. The substitute states that an employee of the Texas Cancer Council, other than the executive director, employed on the effective date of the Act automatically becomes an employee of the Cancer Prevention and Research Institute of Texas, while it also allows the Institute to employ additional staff.