

BILL ANALYSIS

C.S.H.B. 2316
By: Coleman
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Local governments such as counties are governed by a myriad of statutes relating to function and authority and clarification of these statutes is often necessary. Moreover, it is crucial that a local government maximize available resources since local governmental services directly impact the welfare of the public. C.S.H.B. 2316 seeks to establish provisions relating to county powers, duties, and services, including the powers and duties of certain districts, and the authorization of certain health care programs and studies.

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

C.S.H.B. 2316 amends the Code of Criminal Procedure to authorize a person who is incarcerated in a facility operated by or under contract with the Texas Department of Criminal Justice to submit a plea of guilty or plea of nolo contendere regarding a misdemeanor charge in writing, transmitted by mail, facsimile, or other means. The bill requires the court, before accepting such a plea, to make the required admonitions to the defendant in writing.

C.S.H.B. 2316 amends the Election Code to authorize the employment of the county elections administrator to be suspended, with or without pay, as an alternative to being terminated, at any time for good and sufficient cause on the four-fifths vote of the county election commission and approval of that action by a majority vote of the commissioners court.

C.S.H.B. 2316 amends the Government Code to establish provisions relating to a county mental health services Medicaid waiver program and a county HIV and AIDS services Medicaid waiver program. The bill authorizes the Health and Human Services Commission (HHSC), if feasible and cost-effective, to apply for certain waivers under the federal Social Security Act to more efficiently leverage the use of state and local funds in order to maximize the receipt of federal Medicaid matching funds by providing counties in Texas with the flexibility to provide benefits under the Medicaid program to individuals who have a net family income that is at or below 200 percent of the federal poverty level and are eligible to receive mental health services through the county and to individuals who have a net family income that is at or below 150 percent of the federal poverty level and are eligible to receive medical treatment for HIV or AIDS through the county, as applicable. The bill requires HHSC, in establishing the waiver programs, to ensure that the state is a prudent purchaser of the health care services that are needed for such individuals described, solicit broad-based input from interested persons, ensure that the benefits received by an individual through the county are not reduced once the individual is enrolled in the applicable waiver program, and employ the use of intergovernmental transfers and other procedures to maximize the receipt of federal Medicaid matching funds.

C.S.H.B. 2316 excepts an audit working paper of an audit of the auditor of a hospital district, in

addition to certain other entities, from the requirements of a provision establishing that public information is available to the public at a minimum during the normal business hours of a governmental body. The bill makes this change in law applicable to an audit working paper created before, on, or after the bill's effective date.

C.S.H.B. 2316 amends the Health and Safety Code to redefine "general revenue levy," for purposes of the Indigent Health Care and Treatment Act, to include property taxes imposed by a county that are not dedicated to the payment of principal or interest on county debt.

C.S.H.B. 2316 amends the Local Government Code to prohibit the board of directors of a crime control and prevention district, to the extent competitive bidding procedures in provisions regarding the acquisition, sale, or lease of property apply, from entering purchasing contracts that involve spending more than \$50,000, rather than more than \$25,000, unless the board complies with the County Purchasing Act, if the district was created by a county, or provisions relating to the purchasing and contracting authority of a municipality if the district was created by a municipality.

C.S.H.B. 2316 authorizes the governing body of a municipality or county to enact an ordinance or rule prohibiting the sale of any drug or chemical that is potentially abusable and poses a threat to public health as determined by the governing body, but prohibits such a governing body from enacting such an ordinance or rule that prohibits the sale of any substance approved by the federal Food and Drug Administration or that is inconsistent with state law.

C.S.H.B. 2316 makes provisions relating to improvement projects in certain counties applicable to a county with a population of 1.5 million or more, rather than a population of 825,000 or more, other than a county that borders on the Gulf of Mexico or a bay or inlet of the gulf or that has two municipalities located wholly or partly in its boundaries each having a population of 225,000 or more, rather than a population of 300,000 or more.

C.S.H.B. 2316 authorizes a public improvement district created by a county under provisions relating to improvement projects in certain counties to annex or exclude land from the district as provided by annexation or exclusion of land provisions applicable to all water districts. The bill requires such a public improvement district, before the district may adopt an order adding or excluding land, to obtain the consent of the county that created the district by a resolution of the county commissioners court and the consent of a municipality in whose extraterritorial jurisdiction the district is located by a resolution adopted by the municipality's governing body.

C.S.H.B. 2316, in a provision requiring a public improvement district created under provisions relating to improvement projects in certain counties to impose a hotel occupancy tax in the same manner as provided by the County Development District Act and Tax Code provisions relating to an authorized hotel tax for county development districts if authorized by a county, establishes that, except as otherwise provided, a hotel occupancy tax may be used only for a purpose described by Tax Code provisions relating to county hotel occupancy taxes and to encourage the development or operation of a hotel in the district, including an economic development program for or a grant, loan, service, or improvement to a hotel in the district, rather than establishing that a hotel occupancy tax may be used for any purpose authorized by provisions relating to improvement projects in certain counties and is authorized by the county to be imposed by the district. The bill removes language prohibiting a hotel occupancy tax from being imposed on the occupants of a hotel unless the owner of the hotel agrees to the imposition of the hotel occupancy taxes under provisions relating to improvement projects in certain counties. The bill instead authorizes a district to impose a hotel occupancy tax on the occupants of a hotel and use the revenue from the tax for any purpose authorized by such provisions if the owner of the hotel agrees to the imposition of the tax.

C.S.H.B. 2316 authorizes more than one county assistance district to be created in a county. The bill changes the maximum combined rate of all local sales and use taxes imposed in a district

from two percent to the maximum combined rate that is prescribed by Tax Code provisions relating to municipal and county sales and use taxes.

C.S.H.B. 2316 authorizes territory of a municipality that was included in a proposed county assistance district but is excluded from the district by the governing body of the municipality to subsequently be included in another district after complying with applicable statutory requirements and after an election is held regarding inclusion in a district and imposition of the district's sales and use tax. The bill removes a provision prohibiting another election on the question of creating a county assistance district from being held in a county before the first anniversary of the most recent election concerning the creation of a district if a majority of the votes received at the election are against the creation of the district, and instead authorizes the county at any time to call one or more elections on the question of creating one or more county assistance districts.

C.S.H.B. 2316 authorizes the governing body of a district by order, in addition to the authority to include an area in a district by election, to include an area in the district on receipt of a petition or petitions signed by the owner or owners of the majority of the land in the area to be included in the district and provides that no election is required if there are no qualified voters in the area to be included in the district. The bill authorizes a county commissioners court by order to exclude an area from the district if the district has no outstanding bonds payable wholly or partly from sales and use taxes and the exclusion does not impair any outstanding district debt or contractual obligation.

C.S.H.B. 2316 replaces a provision establishing that the commissioners court of the county in which a county assistance district is created is the governing body of the district with a provision requiring the commissioners court of the county in which such a district is created by order to provide that the commissioners court is the governing body of the district or that the commissioners court shall appoint a governing body of the district, that is a board of five directors serving staggered terms of two years and meeting certain eligibility requirements. The bill requires the initial directors to draw lots to achieve certain staggered terms.

C.S.H.B. 2316 authorizes a county assistance district to enter into agreements with municipalities necessary or convenient to achieve the district's purposes, including agreements regarding the duration, rate, and allocation between the district and the municipality of sales and use taxes.

C.S.H.B. 2316 authorizes a district to define areas in the district to pay for improvements, facilities, or services that primarily benefit that area and do not generally and directly benefit the district as a whole and to impose different rates of sales and use taxes in each defined area provided that the sales and use tax rate does not exceed the rate approved at an election on the creation or expansion of the district.

C.S.H.B. 2316 makes the authorization of a county assistance district that has adopted a sales and use tax by order to change the rate of the tax or repeal the tax, if the change or repeal is approved by a majority of the votes received in the district at an election held for that purpose, applicable only to an increase in the rate of the sales and use tax to a rate that exceeds the rate approved at an election on the creation or expansion of the district.

C.S.H.B. 2316 authorizes a district that has adopted a sales and use tax, by order and subject to the maximum combined rate, to reduce the rate of the tax or repeal the tax without an election, except that the district may not repeal the sales and use tax or reduce its rate below the amount pledged to secure payment of an outstanding district debt or contractual obligation. The bill authorizes such a district to increase the rate of the sales and use tax, if the increased rate of the sales and use tax will not exceed the rate approved at an election on the creation or expansion of the district. The bill removes the cap of one-half of one percent to which the sales and use tax may be changed in one or more increments of one-eighth of one percent and makes conforming

changes.

C.S.H.B. 2316 establishes that the adoption of the tax, the increase or reduction of the tax rate, or the repeal of the tax takes effect on the first day of the first calendar quarter occurring after the expiration of the first complete quarter occurring after the date the comptroller of public accounts receives a copy of the order of the district's governing body adopting, increasing, reducing, or repealing the tax, rather than after the date the comptroller receives a notice of the results of an election adopting, changing, or repealing the tax.

C.S.H.B. 2316 amends the Special District Local Laws Code to decrease from 21 to 17 the number of directors on the governing board of the Greater Southeast Management District. The bill establishes that the board serving on September 1, 2011, is abolished and replaced by an interim board consisting of directors specified by the bill, and that the terms of the interim directors expire June 1, 2015. The bill requires the mayor and the members of the governing body of the City of Houston to appoint successor directors not later than June 1, 2015, and to stagger the terms of the directors, with eight of the directors' terms expiring June 1, 2017, and the remaining directors' terms expiring June 1, 2019. The bill sets its provision relating to district interim directors to expire September 1, 2015.

C.S.H.B. 2316 adds temporary provisions, set to expire September 1, 2013, to require HHSC to study the health care delivery systems used by health care providers who are not physicians and requires the study to examine using health care providers who are not physicians to perform basic emergency and non-emergency health care services and preventive health care services within the scope of the health care providers' practice and license. The bill requires the study to specifically address the potential cost savings and other foreseeable consequences of expanding the authority of advanced practice nurses to prescribe medication to patients. The bill requires HHSC to consult with certain entities in conducting the study and submit a report to the legislature on the results of the study not later than December 31, 2012, that must include any recommendations for potential legislation relating to health care providers who are not physicians.

C.S.H.B. 2316 adds temporary provisions, set to expire September 1, 2013, to create an interim committee on health care professionals to conduct a study of the value of health care professionals in cost containment and access to health care and of potential health care delivery systems that include multiple types of providers. The bill provides for the five member composition of the committee, a presiding officer, the powers and duties of the committee, and member reimbursement. The bill requires the committee, not later than December 1, 2012, to report the committee's findings and recommendations to the lieutenant governor, the speaker of the house of representatives, and the governor. The bill requires the committee to include in its recommendations specific statutory and rule amendments that appear necessary from the results of the committee's study. The bill requires the lieutenant governor and the speaker of the house of representatives, not later than November 1, 2011, to appoint the members of the interim committee as provided by the bill.

C.S.H.B. 2316 establishes that the legislature validates and confirms all governmental acts and proceedings before the bill's effective date of a district created under provisions relating to improvement projects in certain counties transferred by Chapter 87 (S.B. 1969), Acts of the 81st Legislature, Regular Session, 2009, before the bill's effective date, including acts of the district's board of directors. The bill makes such validation and confirmation inapplicable to a matter that on the bill's effective date is involved in litigation, if the litigation ultimately results in the matter being held invalid by a final court judgment, or a matter that on the bill's effective date has been held invalid by a final court judgment.

C.S.H.B. 2316 requires a state agency that is affected by a certain provision of the bill to request an amendment to an existing waiver or other authorization if the agency determines that the amendment to the waiver or other authorization is necessary and authorizes the agency to delay

implementation until the amendment or other authorization is granted.

C.S.H.B. 2316 makes conforming and nonsubstantive changes.

C.S.H.B. 2316 repeals Section 387.010(d), Local Government Code, to make a conforming change.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2316 omits provisions included in the original removing the authorization of a warrant of arrest to be forwarded by telegraph from any telegraph office to another in the state; setting out provisions relating to a complaint charging the commission of an offense to be sent to a magistrate in the state; and, if an arrested person fails or refuses to give bail as provided under certain provisions, removing telegraph as a means by which notice regarding the arrest and commitment may be provided to the sheriff of the county in which the offense is alleged to have been committed.

C.S.H.B. 2316 omits a provision included in the original setting out a particular provision relating to the reimbursement of expenses of jurors and prospective jurors and donation of jury reimbursement.

C.S.H.B. 2316 omits provisions included in the original requiring a county, if the county discovers cash in the possession of a deceased pauper, to place the money in a trust account; authorizing a county to create a fund to pay the costs incurred in the disposing of the bodies of deceased paupers; and setting out related provisions.

C.S.H.B. 2316 omits provisions included in the original regarding unidentified human remains.

C.S.H.B. 2316 omits provisions included in the original relating to disbursement of money for jury service.

C.S.H.B. 2316 omits provisions included in the original relating to a small, sole-source county purchase exempt from competitive bidding and to competitive requirements for certain county purchases.

C.S.H.B. 2316 omits a provision included in the original requiring the bidding of a contract awarded by a governmental entity for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property to be accomplished in the manner provided by provisions relating to competitive bidding on certain public works contracts involving a municipality, county, and certain other local governments if a statute requires the governmental entity to award the contract on the basis of competitive bids and the contract requires the expenditure of more than \$25,000 from the funds of a governmental entity other than a county or \$50,000 from the funds of a county.

C.S.H.B. 2316 contains provisions not included in the original providing for a county mental health services Medicaid waiver program and a county HIV and AIDS services Medicaid waiver program.

C.S.H.B. 2316 contains provisions not included in the original excepting an audit working paper of an audit of the auditor of a hospital district from the requirements of a provision establishing that public information is available to the public at a minimum during the normal business hours of a governmental body and making such change in law applicable to an audit working paper

created before, on, or after the bill's effective date.

C.S.H.B. 2316 contains a provision not included in the original redefining "general revenue levy" for purposes of the Indigent Health Care and Treatment Act.

C.S.H.B. 2316 contains provisions not included in the original providing for local regulation regarding the sale of certain abusable drugs.

C.S.H.B. 2316 contains a provision not included in the original amending certain population thresholds regarding the applicability of provisions relating to improvement projects in certain counties.

C.S.H.B. 2316 contains provisions not included in the original providing for the annexation or exclusion of land by a public improvement district created by a county under provisions of law relating to improvement projects in certain counties. The substitute contains provisions not included in the original amending provisions relating to a hotel occupancy tax imposed by such a district.

C.S.H.B. 2316 omits a provision included in the original clarifying that, for the purposes of a person acting as an investigations company for the purposes of the Private Security Act, if the person engages in the business of obtaining or furnishing, or accepts employment to obtain or furnish, certain information, the meaning of "obtaining or furnishing information" does not include information obtained or furnished by an information technology professional who is an employee of a county and who is, in the course and scope of employment, installing or repairing computer equipment belonging to the county or is examining the cause for required repair and who is not performing any other act that requires a license under the act.

C.S.H.B. 2316 contains a provision not included in the original decreasing from 21 to 17 the number of directors on the governing board of the Greater Southeast Management District. The substitute contains temporary provisions not included in the original establishing that the board serving on September 1, 2011, is abolished and replaced by an interim board consisting of specified directors and providing for the appointment of successor directors by the mayor and the members of the governing body of the City of Houston.

C.S.H.B. 2316 contains temporary provisions not included in the original requiring the Health and Human Services Commission (HHSC) to study the health care delivery systems used by health care providers who are not physicians, requiring HHSC to submit a report to the legislature on the results of the study, and setting out related provisions.

C.S.H.B. 2316 contains temporary provisions not included in the original creating an interim committee on health care professionals to conduct a study of the value of health care professionals in cost containment and access to health care and potential health care delivery systems that include multiple types of providers; requiring the committee to report the committee's findings and recommendations to the lieutenant governor, the speaker of the house of representatives, and the governor; and setting out related provisions.

C.S.H.B. 2316 contains provisions not included in the original providing for certain validation and confirmation of governmental acts and proceedings of a district created under provisions relating to improvement projects in certain counties transferred by Chapter 87 (S.B. 1969), Acts of the 81st Legislature, Regular Session, 2009.

C.S.H.B. 2316 contains a provision not included in the original requiring a state agency that determines before implementing a certain provision of the bill that an amendment to an existing waiver or other authorization is necessary to request the amendment to the waiver or other authorization and authorizing the agency to delay implementation.

C.S.H.B. 2316 differs from the original by omitting certain saving provision language to conform to differences between the substitute and the original.

C.S.H.B. 2316 differs from the original by taking effect September 1, 2011, whereas the original takes effect September 1, 2009.