

BILL ANALYSIS

Senate Research Center

S.B. 1623
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Intergovernmental Relations
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1623 amends Chapter 288 (Health Care Funding Districts in Certain Counties Located on Texas-Mexico Border That Are Adjacent to Counties With Population of 50,000 or More), Health & Safety Code, to allow more local control over funding for health care services on the Texas-Mexico border by allowing counties to create a Local Provider Participation Fund. H.B. 2463, 79th Legislature, Regular Session, 2005, created health districts to support the local health care safety-net in certain counties along the Texas-Mexico border. Although the districts were created, they were never fully developed due to a lack of support from the Centers for Medicare and Medicaid Services (CMS).

S.B. 1623 addresses CMS concerns to allow the districts to become fully operational. These health districts are critical to South Texas because of the lack of funding for health care services along the border region.

South Texas has 11 hospitals between Eagle Pass and Brownsville (nearly 400 miles). Unlike other regions in the state, all 11 hospitals in the two South Texas Regional Health Partnerships (RHPs) were designated "Major Safety-Net Hospitals" as defined by the Health and Human Services Commission in the 1115 Transformation Waiver.

Of unused delivery system reform incentive payment (DSRIP), \$541 million is connected to the South Texas Border Region, representing 54 percent of the \$1 billion of unfunded DSRIP for the entire state.

The average RHP is accessing 88 percent of the DSRIP available to it via the 1115 waiver. The Laredo region is accessing only 39 percent of the DSRIP available, and the McAllen/Harlingen/Brownsville region is accessing only 45 percent of the DSRIP available (49 percent and 43 percent less than the average, respectively).

Although the 11 hospitals are major safety-net hospitals, the structure of the waiver has limited the ability of these hospitals to fully participate in the waiver. In fact, these 11 hospitals were originally allocated \$675.3 million in DSRIP but are only accessing \$93.2 million, or 14 percent of all allocated DSRIP funds. Of greater concern is that nine of the 11 hospitals were unable to access even a single dollar of DSRIP.

S.B. 1623 creates a Local Provider Participation Fund in each designated county. The goal of the fund is to provide fair access to funds available under the waiver for the 11 hospitals between Eagle Pass and Brownsville. The bill specifically limits the use of the Local Provider Participation Fund to the waiver and for indigent care. Furthermore, it prohibits using the funds for a Medicaid expansion. Allowing the South Texas border region to implement the Local Provider Participation Fund will not require any funds from general revenue or any investment from the state.

The waiver was designed to improve access, availability, delivery, and funding for safety-net hospitals. Failing to allow these 11 hospitals to fully participate in the waiver will fracture the South Texas health care safety-net and will undermine the core principles behind the waiver. Communities along the Texas-Mexico border will have more flexibility to fund health care services, unemployment compensation payments, and DSRIP projects if the bill is passed. Failing to allow the South Texas border region to create the Local Provider Participation Fund

will increase disparities, and will greatly harm an area of the state most in need of health care support via the waiver.

S.B. 1623 amends current law relating to the creation and operations of health care funding districts in certain counties located on the Texas-Mexico border.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 288, Health and Safety Code, to read as follows:

CHAPTER 288. HEALTH CARE FUNDING DISTRICTS IN CERTAIN COUNTIES
LOCATED ON TEXAS-MEXICO BORDER THAT ARE ADJACENT TO COUNTIES WITH
POPULATION OF 50,000 OR MORE

SECTION 2. Amends Sections 288.001(2) and (3), Health and Safety Code, to define "district" and redefine "paying hospital," rather than "district taxpayer."

SECTION 3. Amends Section 288.002, Health and Safety Code, as follows:

Sec. 288.002. CREATION OF DISTRICT. Authorizes a county health care funding district created by this chapter (district) to be created by order of the commissioners court of, rather than creates a district in, each county located on the Texas-Mexico border that has a population of:

- (1) 500,000 or more and is adjacent to two or more counties each of which has a population of 50,000 or more;
- (2) 350,000 or more and is adjacent to a county described by Subdivision (1); or
- (3) less than 300,000 and contains one or more municipalities with a population of 200,000 or more.

SECTION 4. Amends Subchapter A, Chapter 288, Health and Safety Code, by adding Sections 288.0031 and 288.0032, as follows:

Sec. 288.0031. DISSOLUTION. Authorizes a district created by this chapter to be dissolved in the manner provided for the dissolution of a hospital district under Subchapter E (Change in Boundaries or Dissolution of District), Chapter 286.

Sec. 288.0032. EXPIRATION OF CHAPTER; DISTRIBUTION OF FUNDS ON EXPIRATION. (a) Provides that a district created under this chapter is abolished and this chapter expires on December 31, 2016.

- (b) Requires the commissioners court of a county in which a district is created to refund to each paying hospital the proportionate share of any money remaining in the local provider participation fund created by the district under Section 288.155 at the time the district is abolished.

SECTION 5. Amends the heading to Section 288.051, Health and Safety Code, to read as follows:

Sec. 288.051. COMMISSION; DISTRICT GOVERNANCE.

SECTION 6. Amends Section 288.051, Health and Safety Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Provides that each district created under Section 288.002 is governed by a commission of a district created under this chapter (commission) consisting of the commissioners court of the county in which the district is created, rather than provides that each district is governed by a commission of five members appointed as provided by this section.

(c) Provides that service on the commission by a county commissioner or county judge is an additional duty of that person's office.

(d) Provides that a district is a component of county government and is not a separate political subdivision of this state.

SECTION 7. Amends Section 288.101, Health and Safety Code, as follows:

Sec. 288.101. New heading: LIMITATION ON AUTHORITY TO REQUIRE MANDATORY PAYMENT. Authorizes each district to require a mandatory payment, rather than impose taxes, only in the manner provided by this chapter.

SECTION 8. Amends Section 288.102, Health and Safety Code, as follows:

Sec. 288.102. MAJORITY VOTE REQUIRED. (a) Prohibits a district from requiring any mandatory payment, rather than imposing any tax, authorized by this chapter, spending any money, including for the administrative expenses of the district, or conducting any other business of the commission without an affirmative vote of a majority of the members of the commission.

(b) Requires the commission, before requiring a mandatory payment, rather than imposing a tax, under this chapter in any one year, to obtain the affirmative vote required by Subsection (a).

SECTION 9. Amends Section 288.104(a), Health and Safety Code, to change a reference to a tax to a mandatory payment.

SECTION 10. Amends Section 288.151, Health and Safety Code, as follows:

Sec. 288.151. New heading: HEARING. (a) Requires the commission of a district to hold a public hearing each year on the amounts of any mandatory payments that the commission intends to require during the year and how the revenue derived from those payments is to be spent. Deletes existing text requiring the commission to prepare a budget for the following fiscal year that includes proposed expenditures and disbursements; estimated receipts and collections; and the rates and amounts of any taxes that the commission intends to impose during the year.

(b) Deletes existing text requiring the commission to hold a public hearing on the proposed budget.

(c) Entitles a representative of a paying hospital, rather than entitles any district taxpayer, to appear at the time and place designated in the public notice and to be heard regarding any matter related to the mandatory payments required by the district under this chapter, rather than regarding any item shown in the proposed budget.

SECTION 11. Amends Section 288.154(b), Health and Safety Code, to require that all income received by a district, including the revenue from mandatory payments remaining after discounts and fees for assessing and collecting the payments are deducted, be deposited with the district depository as provided by Section 288.203 and authorizes it to be withdrawn only as provided by this chapter, rather than requiring that all income received by a district, including tax revenue after deducting discounts and fees for assessing and collecting the taxes, be deposited with the district depository and authorizes it to be withdrawn only as provided by this chapter.

SECTION 12. Amends Subchapter D, Chapter 288, Health and Safety Code, by adding Sections 288.155 and 288.156, as follows:

Sec. 288.155. LOCAL PROVIDER PARTICIPATION FUND; AUTHORIZED USES OF MONEY. (a) Requires each district to create a local provider participation fund.

(b) Provides that the local provider participation fund consists of:

(1) all revenue from the mandatory payment required by this chapter, including any penalties and interest attributable to delinquent payments;

(2) money received from the Health and Human Services Commission (HHSC) as a refund of an intergovernmental transfer from the district 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

(3) the earnings of the fund.

(c) Authorizes money deposited to the local provider participation fund to be used only to:

(1) fund intergovernmental transfers from the district to the state to provide the nonfederal share of a Medicaid supplemental payment program authorized under the state Medicaid plan, the Texas Healthcare Transformation and Quality Improvement Program waiver issued under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315), or a successor waiver program authorizing similar Medicaid supplemental payment programs;

(2) subsidize indigent programs;

(3) pay the administrative expenses of the district;

(4) refund a portion of a mandatory payment collected in error from a paying hospital; and

(5) refund to paying hospitals the proportionate share of the money received by the district from HHSC not used to fund the nonfederal share of Medicaid supplemental payment program payments.

(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) and any funds received by the district as a result of an intergovernmental transfer described by that subdivision from being used by the district, the county in which the district is located, 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).

Sec. 288.156. ALLOCATION OF CERTAIN FUNDS. Requires the district, not later than the 15th day after the date the district receives a payment described by Section 288.155(c)(5), to transfer to each paying hospital an amount equal to the proportionate share of those funds to which the hospital is entitled.

SECTION 13. Amends the heading to Subchapter E, Chapter 288, Health and Safety Code, to read as follows:

SUBCHAPTER E. MANDATORY PAYMENTS

SECTION 14. Amends Section 288.201, Health and Safety Code, as follows:

Sec. 288.201. New heading: MANDATORY PAYMENT BASED ON HOSPITAL NET PATIENT REVENUE. (a) Authorizes the commission of a district, except as provided by Subsection (e), to require an annual mandatory payment to be assessed quarterly on the net patient revenue of an institutional health care provider located in the district, rather than authorizes the commission of a district to impose an annual tax to be assessed quarterly on all outpatient hospital visits to an institutional health care provider located in the district. 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 institutional health care provider as determined by the data 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) in the fiscal year ending in 2010 rather than provides that, in the first year in which the tax is imposed, the tax is assessed on the total number of outpatient hospital visits of an institutional health care provider reported to DSHS under Sections 311.032 and 311.033 in the fiscal year ending in 2003. Requires the district to update the amount of the mandatory payment on a biennial basis, rather than requires the district to update this tax basis of outpatient hospital visits reported on a biennial basis.

(b) Requires that the amount of a mandatory payment required under this chapter be uniformly proportionate with the amount of net patient revenue generated by each paying hospital in the district. Prohibits a mandatory payment required under this section from holding harmless any institutional health care provider, as required under 42 U.S.C. Section 1396b(w), rather than prohibiting a tax imposed under this section also holding harmless any institutional health care provider of outpatient hospital services, as required under 42 U.S.C. Section 1396b(w). Deletes existing text requiring that a tax imposed under this section be imposed uniformly on each institutional health care provider of outpatient hospital services located in the district.

(c) Requires the commission of a district to set the amount of the mandatory payment required under this section, rather than requires the commission to set the rate of the tax imposed under this section. 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 district, equals an amount of revenue that exceeds six percent of the aggregate net patient revenue of all paying hospitals in the district, rather than prohibiting the rate from exceeding \$100 for each outpatient hospital visit.

(d) Requires the commission, 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 district, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of revenue from mandatory payments used for administrative expenses of the district in a year may not exceed the lesser of four percent of the total revenue generated from the mandatory payment or \$20,000, rather than requires the commission, subject to the maximum tax rate prescribed by Subsection (c), to set the rate of the tax at a rate that will generate sufficient revenue to cover the administrative expenses of the district, to fund the nonfederal share of a Medicaid supplemental payment program, and to pay for indigent programs, except that the amount of tax revenue used for administrative expenses of the district in a year may not exceed the lesser of four percent of the total revenue generated from the tax or \$20,000.

(e) Prohibits an institutional health care provider from adding a mandatory payment required, rather than from adding a tax imposed, under this section as a surcharge to a patient.

SECTION 15. Amends Section 288.202, Health and Safety Code, as follows:

Sec. 288.202. New heading: ASSESSMENT AND COLLECTION OF MANDATORY PAYMENTS. (a) Requires the county tax assessor-collector, except as provided by Subsection (b), to collect a mandatory payment required under this subchapter, rather than to collect a tax imposed under this subchapter unless the commission employs a tax assessor and collector for the district. Requires the county tax assessor-collector to charge and deduct from mandatory payments collected for the district a fee for collecting the mandatory payment in an amount determined by the commission, not to exceed the county tax assessor-collector's usual and customary charges, rather than requires the county tax assessor-collector to charge and deduct from taxes collected for the district a fee for collecting the tax in an amount determined by the commission, not to exceed the county tax assessor-collector's usual and customary charges for the collection of similar taxes.

(b) Changes a reference to taxes to mandatory payments and makes no further change to this subsection.

(c) Changes a reference to the tax to the mandatory payment and makes no further change to this subsection.

SECTION 16. Amends Section 288.203, Health and Safety Code, as follows:

Sec. 288.203. New heading: DEPOSIT OF REVENUE FROM MANDATORY PAYMENTS. Requires that revenue from the mandatory payment required by this chapter be deposited in the district's local provider participation fund. Deletes existing text authorizing revenue generated by a district from a tax imposed under this subchapter to be used only to provide the nonfederal share of a Medicaid supplemental payment program, subsidize indigent programs, and pay administrative expenses of the district.

SECTION 17. Amends Section 288.204, Health and Safety Code, to provide that interest, penalties, and discounts on mandatory payments required, rather than discounts on taxes imposed, under this subchapter are governed by the law applicable to county ad valorem taxes.

SECTION 18. Amends Section 288.205, Health and Safety Code, as follows:

Sec. 288.205. PURPOSE; CORRECTION OF INVALID PROVISION OR PROCEDURE. (a) Provides that the purpose of this chapter is to generate revenue from a mandatory payment required, rather than from a tax imposed, by the district to provide the nonfederal share of a Medicaid supplemental payment program.

(b) Authorizes the district, to the extent any provision or procedure under this chapter causes a mandatory payment, rather than a tax, 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 19. Repealers: Sections 288.003 (Duration of District), 288.004 (Political Subdivision), 288.051(b) (relating to requiring each county commissioner on the commissioners court of the county in which the district is located to appoint one member who meets the qualifications prescribed by Section 288.052 to serve on the commission), 288.052 (Qualifications of Members of Commission), 288.053 (Term of Members of Commission), 288.054 (Vacancy), 288.055 (Officers), 288.056 (Compensation; Expenses), 288.057 (Employees and Independent Contractors), 288.058 (Maintenance of Records; Public Inspection), 288.103 (Election Required For Certain Expenditures), 288.104(b) (relating to

requiring the commission to adopt certain necessary procedures), 288.105 (Purchasing and Accounting Procedures), 288.107 (Authority to Sue and Be Sued), 288.153 (Annual Audit), and 288.206 (Election Required For Certain Provisions or Procedures), Health and Safety Code.

SECTION 20. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 21. Effective date: upon passage or September 1, 2013.