

BILL ANALYSIS

C.S.H.B. 15
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Higher Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are few effective treatments or cures for hundreds of brain diseases and disorders that affect many Americans, including conditions like Alzheimer's disease, autism, stroke, depression, and substance abuse and addiction. These diseases and disorders may significantly impact individuals and families and the impact to the economy can be equally significant. Nine of the most common neurological diseases, including Alzheimer's disease, Parkinson's disease, and epilepsy, cost the nation approximately \$800 billion per year. The addition of the observed impact of COVID-19 on brain health, both physical and mental, underscores the need for more understanding of the brain. C.S.H.B. 15 seeks to establish the Brain Institute of Texas to create and expedite innovation in brain research to improve the health of residents of this state and enhance the potential for a medical or scientific breakthrough in brain-related sciences and biomedical research in Texas. With the Cancer Prevention and Research Institute of Texas as a model, the bill aims to leverage the expertise and resources of the public and private institutions of higher education in Texas and other partners to create a state-funded research collaborative to put Texas at the forefront of brain research.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Brain Institute of Texas Oversight Committee in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 15 amends the Education Code to establish the Brain Institute of Texas for purposes of the following:

- creating and expediting innovation in brain research to improve the health of residents of Texas;
- enhancing the potential for a medical or scientific breakthrough in brain-related sciences and biomedical research;
- enhancing the brain research superiority of Texas;
- attracting, creating, or expanding research capabilities of eligible institutions of higher education by awarding grants to the institutions to promote a substantial increase in brain research, strategies for prevention of brain-related diseases, brain health initiatives, and the creation of jobs in Texas; and
- developing and implementing a research plan to foster synergistic collaboration and investigation into brain health and research by eligible institutions of higher education and their partners.

The Brain Institute of Texas is subject to the Texas Sunset Act and, unless continued in existence as provided by that act, is abolished and the bill's provisions expire on September 1, 2032.

C.S.H.B. 15 sets out the powers and duties of the institute with regard to the following:

- making grants to further its purposes relating to implementing the Texas Brain Health and Research Plan, conducting brain research in certain specified areas, providing money for the facilities, equipment, supplies, salaries, benefits, and other costs associated with that research, and establishing prevention programs and mitigation strategies for incidence of detrimental health impacts on the brain;
- collaborating with state agencies and certain other entities to enhance brain-related health care and research;
- establishing standards for oversight into the use of authorized money;
- employing necessary staff for administrative support;
- monitoring grant contracts and agreements;
- ensuring compliance of grant proposals;
- establishing procedures relating to compliance with conflict-of-interest rules and the peer review process; and
- creating a statewide research and clinical data registry for brain research.

C.S.H.B. 15 requires the institute to implement, monitor, and as necessary revise the research plan and requires the institute to establish a program integration committee, which has the duties prescribed by the bill and is composed of the institute's chief executive officer (CEO), certain senior-level institute employees appointed by the CEO, and the executive commissioner of the Health and Human Services Commission or the commissioner's designee. The CEO serves as the presiding officer.

C.S.H.B. 15 provides for the hiring of a CEO, chief compliance officer, and additional officers of the institute and provides for the CEO's and chief compliance officer's general duties. The bill requires the CEO to have a demonstrated ability leading and developing academic, commercial, and governmental partnerships and coalitions and sets out certain duties of the chief compliance officer and allows for the hiring of another officer position if the CEO determines it's necessary for efficient operation of the institute. C.S.H.B. 15 also authorizes the appointment of a designee for the chief compliance officer in certain circumstances. The bill requires the institute, not later than January 31 of each year, to prepare and submit a written report to the governor, the lieutenant governor, the speaker of the house of representatives, and each standing committee of the legislature having primary jurisdiction over institute matters and to post the report on the institute's website. The bill sets out the required content of the report.

C.S.H.B. 15 requires the institute to commission annually an independent financial audit of its activities from a certified public accounting firm and to provide the audit to the comptroller of public accounts. The bill requires the comptroller to review and evaluate the audit and annually issue a public report of that review and requires the oversight committee to review the audit, the comptroller's report and evaluation, and the financial practices of the institute. The bill provides for the maintenance of the institute's grant records and requires the institute to keep the records for at least 15 years. The bill authorizes the institute to solicit and accept gifts and grants from any source for its purposes. The bill prohibits an institute employee from having an office located in a facility owned by an entity receiving or applying to receive money from the institute.

C.S.H.B. 15 establishes an oversight committee as the governing body of the institute, with members to be appointed by the governor, lieutenant governor, and speaker of the house of representatives. The bill provides for the composition, terms and vacancies, officers, and powers and duties of the committee and for the removal of a committee member on certain grounds. The bill sets out certain conflicts of interest that preclude a person from being an oversight committee member. The bill establishes that a member of the committee is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in

attending meetings of the committee or performing other official duties authorized by the presiding officer.

C.S.H.B. 15 requires the oversight committee to adopt conflict-of-interest rules, based on standards adopted by the National Institutes of Health, to govern members of the oversight committee, the program integration committee, the peer review committee, and institute employees. The bill provides for the recusal of an institute employee or committee member from participation in certain activities if the employee or member, or an applicable relative, has a professional or financial interest in an entity receiving or applying to receive money from the institute. The bill sets out related provisions that do the following:

- specify what constitutes a professional or financial interest;
- establish requirements for institute employees and committee members to disclose conflicts of interest regarding an application that comes before the employee or committee member for review or other action;
- specify the activities from which an employee or committee member must recuse himself or herself and authorize the employee or committee member to seek a waiver;
- establish that an employee or committee member who reports a potential conflict of interest or another impropriety or self-dealing and who fully complies with the recommendations of the general counsel and recusal requirements is considered in compliance with the bill's conflict-of-interest provisions;
- subject an individual who intentionally violates the disclosure and recusal requirements to removal from further participation in the institute's grant review process; and
- provide for the investigation of an unreported conflict of interest or other impropriety or self-dealing and the resulting determinations and actions addressing the conduct.

The bill requires the oversight committee to adopt rules governing the waiver of the bill's conflict-of-interest requirements under exceptional circumstances and sets out requirements for those rules relating to the manner in which a waiver is proposed, public reporting of a proposed waiver at an oversight committee meeting, the vote threshold for granting a waiver, an annual report of granted waivers to certain legislative officials, and documentation retention. The bill expressly does not limit the authority of the oversight committee to adopt additional conflict-of-interest standards.

C.S.H.B. 15 authorizes the oversight committee to adopt rules to administer the bill's provisions. The bill requires the oversight committee to adopt a code of conduct applicable to each member of the oversight, program integration, and peer review committees and each institute employee. The bill requires each member of the oversight committee to file with the institute's chief compliance officer a verified financial statement complying with specified Government Code provisions, as required of a state officer.

C.S.H.B. 15 provides for the establishment and composition of a peer review committee composed of experts to be appointed by the institute's CEO with approval by a simple majority of the oversight committee. A peer review committee member serves for terms determined by the CEO and may not serve on the board of directors or other governing board of an entity or the entity's collaborator receiving a grant from the institute. The bill authorizes a peer review committee member to receive an honorarium, which is exempt from certain provisions relating to consulting services under government contracts, and provides for the adoption of a policy on in-state or out-of-state residency requirements for peer review committee members, the adoption of a policy regarding honoraria, and the documentation of changes to a member's amount of honoraria.

C.S.H.B. 15 establishes a higher education advisory committee, with one member appointed by the president or dean for each of the following institutions:

- Baylor College of Medicine;
- Texas A&M University Health Science Center;
- Texas Tech University Health Sciences Center;
- Texas Tech University Health Sciences Center at El Paso;

- The University of Texas Southwestern Medical Center;
- The University of Texas Medical Branch at Galveston;
- The University of Texas Health Science Center at Houston;
- The University of Texas Health Science Center at San Antonio;
- The University of Texas Health Science Center at Tyler;
- Dell Medical School at The University of Texas at Austin;
- The University of Texas M. D. Anderson Cancer Center;
- The University of Texas Rio Grande Valley School of Medicine;
- University of North Texas Health Science Center at Fort Worth;
- University of Houston College of Medicine; and
- Sam Houston State University College of Osteopathic Medicine.

The higher education advisory committee must advise the oversight, program integration, and peer review committees on subjects involving brain research. The bill authorizes as necessary the creation of additional ad hoc advisory committees of experts, whose members serve for terms determined by the oversight committee.

C.S.H.B. 15 establishes the Brain Institute of Texas research fund as a dedicated account in the general revenue fund. The bill sets out the components of the fund and limits the use of the fund to the following:

- the award of authorized grants, including grants for brain research and for research facilities in Texas to conduct brain research;
- the purchase of research facilities by or for a grant recipient, subject to approval by the oversight committee;
- the operation of the institute;
- debt service on authorized bonds; and
- the payment of the costs of issuing the bonds and related bond administration costs.

The bill does the following with respect to the issuance of general obligation bonds:

- authorizes the institute to request the Texas Public Finance Authority (TPFA) to issue and sell general obligation bonds of the state;
- prohibits TPFA from issuing and selling those bonds before January 1, 2022;
- caps the amount of bonds TPFA may issue and sell in a state fiscal year at \$300 million;
- 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;
- requires TPFA to issue the bonds in accordance with the Texas Public Finance Authority Act and TPFA rules;
- authorizes the issuance of bonds in installments; and
- requires proceeds of the bonds to be deposited to the credit of the Brain Institute of Texas research fund and used only for authorized purposes.

C.S.H.B. 15 authorizes a grant recipient to use grant money in accordance with a contract between the recipient and the institute. Grant money awarded under the bill's provisions may be used for authorized expenses, including honoraria, salaries and benefits, travel, conference fees and expenses, consumable supplies, other operating expenses, contracted research and development, capital equipment, and construction or renovation of state or private facilities. The bill caps the amount of money awarded in a state fiscal year that may be used for facility purchase, construction, remodel, or renovation purposes during that year at five percent and requires expenditures for those purposes to benefit brain research. The bill caps the amount of money appropriated by the legislature for grants in a state fiscal year that may be used for prevention projects and strategies to mitigate the incidence of detrimental health impacts on the brain during that year at 10 percent. The bill requires TPFA, if it contracts with a private entity to issue bonds under the bill's provisions, to consider contracting with an entity that has its principal place of business in Texas and to consider using a historically underutilized business.

C.S.H.B. 15 makes a public or private institution of higher education in Texas eligible for a grant award and authorizes a grant recipient to use the money received from a grant for the prescribed purposes in a collaborative partnership with certain entities or another relevant person or organization in this state, which must be located in Texas or, if applicable, collaborating on a project based in Texas. The bill requires the institute to use a peer review process to evaluate and recommend all grants awarded by the oversight committee. The bill requires the institute's oversight committee to adopt rules establishing procedures for awarding grants, which must do the following:

- require the peer review committee to score grant applications and make recommendations to the program integration and oversight committees regarding the award of grants, including the creation of a prioritized list that ranks the grant applications in the order the peer review committee determines applications should be funded and includes information explaining the reasons each grant application on the list meets the peer review committee's standards for recommendation; and
- require the program integration committee to submit to the oversight committee a list of grant applications the program integration committee by majority vote approved for recommendation that includes documentation on the factors considered, is substantially based on the peer review committee's list, and, to the extent possible, gives priority to proposals that satisfy certain criteria prescribed by the bill.

C.S.H.B. 15 does the following with respect to the award of a grant:

- prohibits a member of the peer review committee from attempting to use the member's official position to influence a decision to approve or award a grant or contract to the committee member's employer;
- requires the institute's CEO to submit a written affidavit for each grant application recommendation included on the program integration committee's submitted list that includes relevant information on the peer review process and peer review score;
- prohibits a member of the program integration committee from discussing a grant applicant recommendation with a member of the oversight committee unless the CEO and the program integration committee have fulfilled the applicable requirements under the bill's provisions;
- requires two-thirds of the members of the oversight committee present and voting to vote to approve each funding recommendation made by the program integration committee and, if the oversight committee does not approve a recommendation, requires a statement explaining the reasons the recommendation was not followed to be included in the minutes of the meeting;
- caps the award of grants for a state fiscal year at \$300 million; and
- prohibits the institute from awarding a grant to an applicant who has made a gift or grant with a value that exceeds \$50 to the institute, an oversight committee member, or an institute employee on or after January 1, 2022, but authorizes the oversight committee to waive that prohibition in the same manner as it may waive other conflict-of-interest requirements under the bill.

C.S.H.B. 15 authorizes the institute's oversight committee to award grant money for a multiyear project. If such a grant is awarded, the oversight committee is required to specify the total amount of money awarded in the state fiscal year that the multiyear project is approved. The bill requires the institute to distribute only the amount of grant money that the grant recipient will spend during that fiscal year and to distribute the remaining grant money as the grant recipient needs in each subsequent state fiscal year.

C.S.H.B. 15 requires the institute, before awarding a grant, to enter into a written contract with the grant recipient and sets out certain terms the contract may include with respect to grant money used to build a capital improvement, repayment of funds not used for approved purposes, and contract termination if terms and conditions are not met. The bill requires the oversight committee to adopt rules to administer these provisions of the bill.

C.S.H.B. 15 requires the oversight committee to establish standards requiring all grant awards to be subject to an intellectual property agreement that allows the state to collect royalties, income, and other benefits, including interest or proceeds resulting from securities and equity ownership, realized as a result of projects undertaken with money awarded under the bill's provisions. The bill authorizes the oversight committee to exempt state agencies and public institutions of higher education from the standards. The bill provides for the manner of determining the state's interest in any intellectual property rights and revenue sharing, the oversight committee's authority to transfer management and disposition authority over the state's interest in benefits realized as a result of projects to the Texas Treasury Safekeeping Trust Company, and the trust company's management of such transferred assets.

C.S.H.B. 15 requires the oversight committee to establish standards to ensure that grant recipients purchase goods and services from suppliers in Texas to the extent reasonably possible in a good faith effort to achieve a goal of more than 50 percent of purchases from such suppliers. The oversight committee must also establish standards to ensure that grant recipients purchase goods and services from historically underutilized businesses.

C.S.H.B. 15 provides for the following:

- regular reviews of grant projects by institute staff to ensure compliance with grant terms and to ensure ongoing progress, including the scientific merit of the research;
- the institute's establishment and implementation of a grant compliance and progress review process that includes reporting requirements to ensure grant recipients comply with contract terms and conditions;
- the CEO's authority to terminate grants that do not meet contractual obligations;
- the CEO's duty to report annually to the oversight committee on the progress and continued merit of projects awarded grants;
- implementation of a system to track the dates grant recipient reports are due and are received and to monitor the status of reports not timely submitted; and
- the chief compliance officer's duty with respect to ensuring compliance with these reporting requirements.

Any project that is awarded a grant under the bill's provisions must comply with all applicable federal and state laws regarding the conduct of the research or prevention project.

C.S.H.B. 15 sets out the information relating to a grant, grant applicant, or grant recipient that is public information and subject to disclosure under state public information law and the information that is not subject to disclosure under any law. The bill requires the institute to post on its website records that pertain specifically to any gift, grant, or other consideration provided to the institute, an institute employee, or a member of the oversight committee, in the employee's or oversight committee member's official capacity. The posted information must include each donor's name and the amount and date of the donor's donation.

C.S.H.B. 15 requires the institute to establish a compliance program that operates under the direction of the chief compliance officer. The institute may establish procedures, including a telephone hotline, for private access to the compliance program office and preserving the confidentiality of communications and the anonymity of a person making a compliance report or participating in a compliance investigation. The bill sets out the information relating to the compliance program that is confidential and not subject to state public information law but provides for the disclosure of such information to certain entities and establishes that such a disclosure is not voluntary for purposes of state public information law. The bill authorizes the oversight committee to conduct a closed meeting under state open meetings law to discuss an ongoing compliance investigation into issues related to fraud, waste, or abuse of state resources.

Implementation of a provision of this bill relating to the institute by the institute is mandatory only if a specific appropriation is made for that purpose. The bill requires the appropriate appointing authority, not later than December 1, 2022, to appoint the members to the oversight

committee and prohibits the committee from taking action until a majority of the members have taken office. The bill provides for the initial appointment of members with staggered terms.

C.S.H.B. 15 exempts the institute from a prohibition against a state agency entering into certain research contracts with an institution of higher education. The bill includes the Brain Institute of Texas in the definition of "other agency of higher education" and defines "higher education advisory committee," "institute," "oversight committee," "peer review committee," "program integration committee," and "research plan."

EFFECTIVE DATE

January 1, 2022, if the constitutional amendment authorizing the issuance of general obligation bonds and the dedication of bond proceeds to the Brain Institute of Texas established to fund brain research is approved by the voters.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 15 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the institute's purposes, as prescribed in the original, by including promotion of brain health initiatives as a purpose for which grants may be awarded and by expanding the scope of the brain research plan the institute is required to develop to include brain health.

The substitute changes the sunset date of the institute from September 1, 2031, as in the original, to September 1, 2032.

With respect to the institute's powers and duties, the substitute changes the original's provisions as follows:

- revises the institute's authority to make grants relating to neurological health issue research;
- specifies that the creation of a statewide research and clinical data registry for brain research is a duty of the institute, whereas the original specified that it was a purpose for which the institute may make grants; and
- includes a requirement for the institute to ensure that all grant proposals comply with the bill's provisions and rules adopted under those provisions before the proposals are submitted for oversight committee approval.

The substitute includes an authorization that was not in the original relating to the appointment of a designee for the chief compliance officer.

The substitute revises the original's provisions establishing an annual reporting requirement for the institute by expanding the list of information that must be included in the report.

The original required the comptroller to make recommendations concerning the institute's financial practices and performance. The substitute does not include that requirement but does require the oversight committee to review the institute's annual financial audit, the comptroller's report and evaluation of the audit, and the financial practices of the institute.

The substitute includes a provision that was not in the original prohibiting an institute employee from having an office located in a facility owned by an entity receiving or applying to receive money from the institute.

The substitute includes the following provisions that were not in the original relating to oversight committee members:

- a provision setting out certain conflicts of interest that preclude a person from being a member of the oversight committee; and
- provisions relating to the removal of oversight committee members.

The substitute includes the following provisions that were not in the original relating to conflicts of interest:

- provisions relating to the recusal of an institute employee or a member of the oversight, program integration, or peer review committees in certain circumstances, including provisions relating to required conflict-of-interest disclosure and the investigation and final determination of unreported conflicts of interest or other impropriety or self-dealing;
- a requirement for the oversight committee to adopt certain rules governing the waiver of the conflict-of-interest requirements under exceptional circumstances; and
- a specification that the bill's provisions do not limit the authority of the oversight committee to adopt additional conflict-of-interest standards.

The substitute renames the research committee established by the original as the peer review committee and includes the following provisions not in the original relating to that committee:

- a requirement for the CEO to adopt a policy regarding honoraria and document any change in the amount of honoraria paid to a member of the peer review committee;
- a prohibition against a member of the peer review committee serving on any governing body of an entity or entity's collaborator receiving a grant from the institute; and
- a specification that committee members serve for terms as determined by the CEO.

The substitute changes the original's authorization for the CEO to create ad hoc advisory committees with majority approval of the oversight committee to an authorization for the oversight committee itself to create such committees. The substitute further revises that authorization to include additional issues for which such a committee may provide advice and to specify that ad hoc committee members serve for the terms determined by the oversight committee.

The substitute revises the composition of the Brain Institute of Texas research fund created by the original by, among other changes, removing the specification that the fund includes proceeds of general obligation bonds issued for purposes of the fund. The substitute expands the purposes for which the fund may be used to include debt service on bonds and the payment of the costs of issuing the bonds and related bond administration costs.

The substitute decreases the cap on the amount of general obligation bonds that may be issued and sold under the bill's provisions in a state fiscal year from \$500 million, as set in the original, to \$300 million. The substitute includes provisions not in the original that do the following:

- cap the amount of awarded grant money that may be used for facility purchase, construction, remodel, or renovation purposes in a state fiscal year;
- cap the amount of appropriated money that may be used for certain prevention projects and mitigation strategies in a state fiscal year; and
- establish preferences for Texas businesses and historically underutilized businesses with respect to contracts for the issuance of bonds.

The original limited eligibility for a grant to the institutions of higher education that are represented on the higher education advisory committee, whereas the substitute makes any public or private institution of higher education in Texas eligible. The substitute revises the original's authorization for a grant recipient to use awarded money in a collaborative partnership with certain entities by limiting that authorization to entities located in Texas or, if applicable, collaborating on a project based in Texas. The substitute also removes the specification that the

grant recipient may do so any time before or during the application process or after a grant is awarded.

The substitute includes provisions not in the original that establish the program integration committee and give that committee a role in the review process for grant applications. Whereas the original required the research committee, renamed as the peer review committee, to make grant award recommendations that the oversight committee then votes on, the substitute establishes a process where both the peer review committee and the program integration committee make recommendations, but it's the program integration committee's recommendations that get voted on by the oversight committee. The substitute includes the following provisions not in the original relating to the award of grants:

- a prohibition against a peer review committee member attempting to use the member's official position to influence a decision to approve or award a grant or contract to the committee member's employer;
- a requirement for the CEO to submit a certain written affidavit for grant application recommendations;
- a prohibition against a member of the program integration committee discussing recommendations with a member of the oversight committee unless certain requirements are fulfilled;
- a \$300 million cap on the total amount awarded in a state fiscal year; and
- a prohibition against the institute awarding a grant to an applicant who has made a gift or grant with a value that exceeds \$50 to the institute, an oversight committee member, or an institute employee on or after January 1, 2022.

The substitute replaces the original's requirement for the CEO, with oversight committee approval, to determine a grant review process with a requirement for the institute to establish and implement a grant compliance and progress review process. With respect to that process, the substitute does the following:

- omits the original's specification that the reviews to which a grant recipient must submit are inspection reviews;
- expands the purposes for which such reviews are conducted to include the evaluation of ongoing progress; and
- includes an authorization not in the original for the CEO to terminate grants that do not meet contractual obligations.

The substitute includes the following provisions not in the original:

- requirements that apply if the oversight committee awards grant money for a multiyear project;
- provisions requiring the institute to enter into a written contract with a grant recipient, authorizing the contract to include certain terms, and requiring the oversight committee to adopt rules to administer these provisions;
- provisions relating to patent royalties and license revenues;
- provisions establishing preferences for the use of Texas suppliers and historically underutilized businesses by grant recipients;
- an authorization for the institute to establish procedures for private access to the compliance program office and preserving the confidentiality of communications and the anonymity of a person making a compliance report or participating in a compliance investigation; and
- a provision including the institute in the definition of "other agency of higher education."

The substitute revises the original's provisions establishing the confidentiality of certain information relating to a grant, grant applicant, or grant recipient.

The original required the institute to post on its website records that pertain specifically to any gift, grant, or other consideration provided to an institute employee or a member of an institute committee. The substitute specifies that this requirement applies only to consideration provided

in the employee's or member's official capacity and that the oversight committee is the only committee subject to this requirement.