HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • http://www.hro.house.state.tx.us

HOUSE RESEARCH ORGANIZATION

daily floor report

Sunday, June 23, 2013
83rd Legislature, First Called Session, Number 6
The House convenes at 2 p.m.

Three bills and one proposed constitutional amendment have been set on the daily calendar for second reading consideration today:

HB 60 by Laubenberg	Regulating abortion procedures, providers, and facilities	1
HB 16 by Laubenberg	Relating to abortion at or after 20 weeks post-fertilization	10
SB 5 by Hegar	Regulating abortion procedures, providers, and facilities	15
SJR 2 by Nichols	Dedicating a portion of Rainy Day Fund revenue to transportation	24

The House will also consider SCR 2 by Duncan (Raymond) on today's Concurrent Resolutions Calendar.

Bill Callegari
Chairman
83(1) – 6

SUBJECT: Regulating abortion procedures, providers, and facilities

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 7 ayes — Cook, Craddick, Frullo, Harless, Hilderbran, Huberty, Smithee

2 nays — Farrar, Sylvester Turner

4 absent — Giddings, Geren, Menéndez, Oliveira

WITNESSES: For — Jennifer Allmon, The Texas Catholic Conference of Bishops; Carol Everett, Women's Wellness Coalition; MerryLynn Gerstenschlager, Texas Eagle Forum; Ann Hettinger and Cecilia Wood, Concerned Women for America of Texas; Beverly Nuckols, Texas Alliance for Life; John Seago and Kyleen Wright, Texans for Life; and 15 individuals; (*Registered, but did not testify*: Veronica Arnold, Elizabeth Graham, and Emily Horne, Texas Right to Life; Erin Blauvelt, Leah Brown, Rachana Chhin, and Joe Pojman, Texas Alliance for Life; Elizabeth Davidson, Women's Wellness Coalition of Texas; Ferrell Foster, Baptist General Convention of Texas; Jeffery Patterson, Texas Catholic Conference of Bishops; Jonathan Saenz, Texas Values; and 8 individuals)

Against — Hannah Beck, National Organization for Women at UTSA; Anne Budroni, Planned Parenthood; Terri Burke, American Civil Liberties Union (ACLU) of Texas; Elizabeth Burr, Capital Area Democratic Women; Heather Busby and Melissa Nicholson, Naral Pro-Choice Texas; Carolyn Calabrese and Laura Davila, Feminist Austin Networking Group; Matthew Chandler, The Young Democrats at UTSA; Susan Clark, Suburban Southwest Texas Democratic Women; Stacey Edwards, Bluebonnet Brigade; Andrea Ferrigno and Amy Hagstrom Miller, Whole Woman's Health; Chuck Freeman, Texas Unitarian Universalist Justice Ministry; Suzanne Hemphill, The Lilith Fund; Amanda Hernandez, Spring Democrats and Pro-Choice Houston; Tina Hester, Jane's Due Process; Cindy Noland, Faith Action for Women in Need and Catholics for Choice; Frances Northcutt, Texas State National Organization for Women; and about 85 individuals; (*Registered, but did not testify*: Bryant Andrade, GLBTQ of UTSA; Charles Bailey, Texas Hospital Association; Cardenas and Colleen Loper, Annie's List; Mounir Elharim, Institute for Truth; Lisa Hollier, Texas District of the American Congress of Obstetricians and

Gynecologists; Harold Huff, Austin County Democratic Party; Deanna Kilgore, Feminist Austin Networking Group; Jessica Klier and Yunuen Salgado, Austin Women's Health Center; Geraldine Mongold, Faith Action for Women in Need; Peggy Morton, First Unitarian Universalist Church of Austin Social Action Committee; Theresa Norman, Planned Parenthood; Judy Parken, League of Women Voters of Texas; Bijal Patel, Lilith Fund; Fredericka Phillips, Suburban Southwest Texas Democratic Women; Susan Pintchovski, National Council of Jewish Women and Texas State Policy Advocacy Network; Karen Rankin, League of Women Voters; Rico Reyes, Rico Reyes for HD 50; Samantha Riemer, Whole Woman's Health; Blake Rocap, Naral Pro-Choice Texas; Cathryn Snyder, FANG; Jan Soifer, Travis County Democratic Party; Leslie Tisdale, University Democrats at UT; and about 325 individuals)

On — (*Registered, but did not testify*: Lyudmila Baskin and Ellen Cooper, Department of State Health Services; Laureta Sela)

BACKGROUND:

Health and Safety Code, sec. 170.002 prohibits the performance of an abortion on a woman who is pregnant with a viable unborn child during the third trimester unless, in the physician's best medical judgment:

- it is necessary to prevent the woman's death or a substantial risk of serious impairment to her physical or mental health; or
- the fetus has a severe and irreversible abnormality identified by reliable diagnostic procedures.

The 78th Legislature in 2003 enacted HB 15 by Corte, which added Health and Safety Code, ch. 171 (the Woman's Right to Know Act). Sec. 171.004 requires that an abortion of a fetus age 16 weeks or greater be performed at an ambulatory surgical center or hospital licensed to perform the abortion.

Health and Safety Code, sec. 245.010(c) prohibits certain health and safety standards of an abortion facility from being more stringent than Medicare certification standards.

DIGEST:

CSHB 60 would add new requirements to state laws governing abortions, the facilities where abortions are performed or induced, and the distribution of abortion-inducing drugs.

Twenty-week ban. CSHB 60 would add subch. C, the Preborn Pain Act,

to Health and Safety Code, ch. 171. The subchapter would require a physician, prior to performing an abortion, to determine the probable "post-fertilization age," defined as the age of the unborn child calculated from the fusion of a human spermatozoon with a human ovum. An abortion could not be performed or induced if a physician determined that the probable post-fertilization age of the unborn child was 20 weeks or greater.

The ban would not apply to an abortion required to save a woman's life or to prevent her from suffering an irreversible physical impairment of a major bodily function, other than a psychological condition. The prohibition also would not apply to an abortion performed on an unborn child who had a severe fetal abnormality. A physician performing a post-20-week abortion would be required to terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provided the best opportunity for the unborn child to survive.

In a civil or criminal proceeding arising from a prohibited abortion under the Preborn Pain Act, the identity of the woman would not be subject to public disclosure unless the woman consented or a court found, following a hearing, that disclosure was essential to the administration of justice. The bill would allow court records to be sealed and courtrooms to be closed to prevent the disclosure. It would not authorize the prosecution of a woman on whom an abortion was performed or attempted in violation of the Preborn Pain Act.

Physician and facility requirements. The bill would require a physician performing or inducing an abortion to have active admitting privileges at a hospital providing obstetrical or gynecological health care services that was located within 30 miles of the abortion facility. The physician would be required to provide the woman with emergency telephone contact information for the physician or other health care personnel and the nearest hospital in case of complications. A violation of these requirements would be a class A misdemeanor, punishable only by a fine of $4,000 or less.

Beginning September 1, 2014, the minimum standards for an abortion facility would be equivalent to those for an ambulatory surgical center. The bill would repeal a statutory provision prohibiting certain minimum standards for abortion facilities from being more stringent than Medicare certification standards. The executive commissioner of the Health and

Human Services Commission would be required to adopt the new standards for abortion facilities by January 1, 2014.

CSHB 60 would include among the annual reporting requirements by facilities for each abortion performed the probable post-fertilization age of the unborn child rather than the period of gestation.

The bill would amend the Occupations Code to make it a prohibited practice for a physician to perform or induce an abortion in violation of the 20-week ban. The bill would exempt physicians who violated the Preborn Pain Act from criminal penalties provided under certain provisions of the Occupations Code.

Drug-induced abortions. The bill would add a separate subchapter on abortion-inducing drugs such as the Mifeprex regimen, also known as RU-486. A drug, medicine, or other substance that may be known to cause an abortion but that was prescribed, dispensed, or administered for other medical reasons would not be considered an abortion-inducing drug.

An act would not be considered an abortion if done with the intent to:

- remove an unborn child whose death was caused by a spontaneous abortion or to remove an ectopic pregnancy; or
- to treat a maternal disease or illness for which a prescribed, drug, medicine, or other substance was indicated.

The bill would prohibit anyone other than a physician from giving, selling, dispensing, administering, or prescribing an abortion-inducing drug to a pregnant woman. Physicians would be required to follow the protocol tested and authorized by the U.S. Food and Drug Administration (FDA) as outlined in the final printed label of the drug, except they could administer the dosage amount prescribed by the clinical management guidelines defined by the American Congress of Obstetricians and Gynecologists Practice Bulletin as those guidelines existed on January 1, 2013.

A physician would be required to provide the woman with a copy of the label and a telephone number to reach the physician or other health care personnel for questions or to receive medical assistance following any complications. A follow-up visit would be required within 14 days after use of the drug to confirm that the pregnancy had been completely terminated and to assess the degree of bleeding. Doctors would be

required to report serious adverse events related to the drugs to the FDA through the MedWatch Reporting System.

The Texas Medical Board would be authorized to take disciplinary action or assess an administrative penalty against a physician who violated the provisions concerning abortion-inducing drugs. A woman who received a medical abortion under this subchapter could not be assessed a penalty.

Severability. The bill would include language to sever any provision declared temporarily or permanently restrained or enjoined by judicial order from all other provisions of Texas law regulating or restricting abortions, allowing provisions not subject to a judicial order to continue to be enforced.

Findings. CSHB 60 would adopt legislative findings that substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than 20 weeks after fertilization and the state has a compelling interest in protecting the lives those unborn children. The findings would state that restricting elective abortions at or later than 20 weeks post-fertilization does not impose an undue burden because the woman has had adequate time to decide to have an abortion.

Effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the first called session (September 24, 2013, if both houses adjourn sine die on June 25).

SUPPORTERS SAY:

CSHB 60 would recognize advances in knowledge of fetal development that demonstrate unborn children can feel pain at 20 weeks post fertilization and would prohibit abortions at that stage. The bill also would improve the standard of care for women seeking earlier abortions.

Fetal pain. CSHB 60 would recognize the state's compelling interesting in protecting an unborn child from pain. There is scientific evidence suggesting that a preborn child is capable of feeling pain at 20 weeks post-fertilization because neuroreceptors are functioning.

According to a recent study by the University of Arkansas for Medical Sciences, fetuses undergoing intrauterine invasive procedures were reported to show coordinated responses signaling the avoidance of tissue injury, responses that indicate a response to pain. Sonogram pictures show

babies in utero withdrawing from a probe as early as 12 weeks. In addition, doctors sometimes use anesthesia when performing procedures on a fetus in recognition of possible pain.

The 2005 article in the Journal of the American Medical Association cited by opponents is out of date and does not reflect numerous studies done since that time providing evidence that a five-month-old baby in the womb does feel pain.

While banning most abortions after 20 weeks, the bill would make appropriate exceptions for pregnancies that threatened the mother's life or major bodily function and when a severe fetal abnormality was present. It would not be appropriate to make exceptions based on subjective, and possibly inaccurate, evaluations of a pregnant woman's mental state, which could be influenced by hormonal mood swings that many women experience at various times during pregnancy.

The bill would not affect the ability of a woman who became pregnant due to rape or incest from having an abortion. In such unfortunate cases, CSHB 60 would provide sufficient time for a woman to receive an abortion if she so chose.

Physician and facility requirements. An abortion is a surgical procedure and CSHB 60 would ensure a higher level of care by requiring all abortions to be performed in an ambulatory surgical center. Compared to an ordinary abortion facility, these surgical centers hire more highly qualified professionals and implement more rigorous quality-assurance programs. Ambulatory surgical centers are more often checked for compliance with safety requirements and must be equipped with back-up generators and better air filtration systems. These more frequent inspections could prevent the occurrence of a situation in Texas like the one recently exposed in Philadelphia, in which Dr. Kermit Gosnell was recently convicted of murder after killing babies who were born alive. A patient also died at that substandard clinic.

The bill would give operators of abortion facilities sufficient time to comply with the new standards, which would not take effect until September 2014. While improving standards comes at a cost, abortion facility operators should be willing to invest some of their profits to ensure the highest level of care for their patients.

Doctors who provide abortions should be required to have admitting privileges at a nearby hospital in case one of their patients suffers complications and needs to be hospitalized. All of the state's existing facilities are within 30 miles of a hospital where they could be admitted, and two-thirds of physicians who perform abortions already have those privileges. The bill would force doctors who did not have hospital admitting privileges to upgrade their standards or stop performing abortions.

Drug-induced abortions. CSHB 60 would ensure the safety of women using RU-486 to induce an abortion by requiring physicians to administer the medication in the manner approved by the FDA, which says the drugs should be taken on two different days at a clinic under a doctor's supervision. Some abortion facilities are sending women home to take the second dosage alone without giving them information about what to do if complications arise.

The bill would ensure that women safely took the drugs and left the facility prepared to contact a physician or other medical personnel, as well as the nearest hospital, in case of emergency. The bill also would protect women by requiring a follow-up visit within 14 days to make sure the pregnancy had been completely terminated.

OPPONENTS SAY:

CSHB 60 would use the disputed claim that fetuses at 20 weeks of development can feel pain to deny women their constitutional right to an abortion. The bill also would make it more difficult for abortion clinics to operate by adding costly new requirements that are not necessary for early abortions.

Fetal pain. The U.S. Supreme Court legalized abortion nationwide in 1973 and allowed states to place restrictions on the procedure from the time of viability. CSHB 60 would be unconstitutional because it would ban abortions of fetuses before they were viable outside the womb based on an unproven claim that a 20-week-old fetus can feel pain. The authors of a 2005 article in the Journal of the American Medical Association reviewed research into fetal development and concluded that the fetus probably does not feel pain before 29 or 30 weeks.

The bill would be subject to constitutional challenges similar to one that resulted in a federal appeals court in May 2013 striking down an Arizona law that bans abortions from 20 weeks' gestation. The court said it was

"unalterably clear" under U.S. Supreme Court rulings that women have a right to terminate pregnancies until a fetus is viable. Courts are weighing challenges to similar laws in other states.

Fetal abnormalities often are not detected until a woman is at least 20 weeks into her pregnancy. CSHB 60 could place barriers to an abortion under those circumstances by removing a doctor's discretion to perform an abortion after this deadline.

Unlike Texas law on third-trimester abortions, the bill would not allow an exception based on the pregnant woman's mental health status. It also would not allow exceptions for pregnancies resulting from rape and incest.

Physician and facility requirements. Early abortions are safer and simpler procedures than those commonly performed in ambulatory surgical centers. Texas women are adequately protected under current law, which requires only those who are have been pregnant for 16 weeks or longer to receive abortions in ambulatory surgical centers.

CSHB 60 could result in the closure of clinics and force women to choose unsafe options. Of the state's 42 abortion clinics, 37 would not meet the ambulatory surgical center requirements, and retrofitting those facilities to meet the new standards would be expensive. According to Whole Woman's Health, it costs an additional $40,000 each month to operate a practice's surgical center compared to its non-surgical centers.

The current surgical centers performing abortions are located in the state's major metropolitan areas. If clinics in other parts of the state closed, it could force women to travel long distances and increase the cost of exercising their constitutional right to an abortion.

It could be difficult for doctors who perform or induce abortions to meet the requirement to have admitting privileges at a hospital with an obstetrical unit located within 30 miles. Some private, religiously affiliated hospitals do not admit physicians who perform abortions.

Drug-induced abortions. Women should not be required to go to an ambulatory surgical center to take abortion-inducing drugs that are currently being safely administered in abortion facilities.

NOTES: The committee substitute differs from the bill as filed in that the

committee substitute would:

- refer to "severe fetal abnormality," rather than "profound and irremediable congenital anomaly"; and
- allow physicians administering drug-induced abortions to use the dosage amount prescribed by certain clinical management guidelines.

Two other abortion-related bills are on today's Major State Calendar. CSHB 16 by Laubenberg would enact the Preborn Pain Act contained in CSHB 60. CSSB 5 by Hegar is the Senate companion to CSHB 60.

SUBJECT: Relating to abortion at or after 20 weeks post-fertilization

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 7 ayes — Cook, Craddick, Frullo, Harless, Hilderbran, Huberty, Smithee

1 nay — Farrar

5 absent — Giddings, Geren, Menéndez, Oliveira, Sylvester Turner

WITNESSES: For — Michelle Balon, (*Registered, but did not testify*: Jennifer Allmon and Jeffery Patterson, The Texas Catholic Conference of Bishops; Veronica Arnold, Elizabeth Graham, Emily Horne, and John Seago, Texas Right to Life; Erin Blauvelt, Rachana Chhin, Beverly Nuckols, and Joe Pojman, Texas Alliance for Life; Elizabeth Davidson, Women's Wellness Coalition of Texas; Carol Everett, Women's Wellness Coalition; Ferrell Foster, Baptist General Convention of Texas; MerryLynn Gerstenschlager, Texas Eagle Forum; Ann Hettinger and Cecilia Wood, Concerned Women for America of Texas; Jonathan Saenz, Texas Values; Kyleen Wright, Texans for Life; and 16 individuals)

Against — Anne Budroni, Planned Parenthood; , Susan Pintchovski, National Council of Jewish Women and Texas State Policy Advocacy Network; Leslie Tisdale, University Democrats; and 36 individuals; (*Registered, but did not testify*: Tanene Allison, Texas Democratic Party; Bryant Andrade, GLBTQ of UTSA; Hannah Beck, National Organization for Women at UTSA; Terri Burke, American Civil Liberties Union (ACLU) of Texas; Elizabeth Burr, Capital Area Democratic Women; Heather Busby, Melissa Nicholson and Blake Rocap, Naral Pro-Choice Texas; Carolyn Calabrese and Laura Davila, Feminist Austin Networking Group; Matthew Chandler, The Young Democrats at UTSA; Alexander Clark, Texas Young Democrats; Susan Clark, Suburban Southwest Texas Democratic Women; Stacey Edwards, Bluebonnet Brigade; Mounir Elharim, Institute for Truth; Marcia Fowler, Seeing Red; Chuck Freeman, Texas Unitarian Universalist Justice Ministry; Amy Hagstrom Miller and Samantha Riemer, Whole Woman's Health; Suzanne Hemphill and Bijal Patel, The Lilith Fund; Amanda Hernandez, Spring Democrats and Pro-Choice Houston; Tina Hester, Jane's Due Process; Lisa Hollier, Texas District of the American Congress of Obstetricians and Gynecologists;

Harold Huff, Austin County Democratic Party; Jessica Klier, Austin Women's Health Center; Colleen Loper, Annie's List; Geraldine Mongold, Faith Action for Women in Need; Peggy Morton, First Unitarian Universalist Church of Austin Social Action Committee; Cindy Noland, Faith Action for Women in Need and Catholics for Choice; Theresa Norman, Planned Parenthood; Frances Northcutt, Texas State National Organization for Women; Judy Parken, League of Women Voters of Texas; Fredericka Phillips, Suburban Southwest Texas Democratic Women; Karen Rankin, League of Women Voters; Cathryn Snyder, FANG; Jan Soifer, Travis County Democratic Party; and about 330 individuals)

On — Zenobia Joseph; (*Registered, but did not testify*: Ellen Cooper, Department of State Health Services)

BACKGROUND:

Health and Safety Code, sec. 170.002 prohibits the performance of an abortion on a woman who is pregnant with a viable unborn child during the third trimester unless, in the physician's best medical judgment:

- it is necessary to prevent the woman's death or a substantial risk of serious impairment to her physical or mental health; or
- the fetus has a severe and irreversible abnormality identified by reliable diagnostic procedures.

DIGEST:

CSHB 16 would add subch. C, the Preborn Pain Act, to Health and Safety Code, ch. 171. The subchapter would require a physician, prior to performing an abortion, to determine the probable "post-fertilization age," defined as the age of the unborn child calculated from the fusion of a human spermatozoon with a human ovum. An abortion could not be performed or induced if a physician determined that the probable post-fertilization age of the unborn child was 20 weeks or greater.

The ban would not apply to an abortion required to save a woman's life or to prevent her from suffering an irreversible physical impairment of a major bodily function, other than a psychological condition. The prohibition also would not apply to an abortion performed on an unborn child who had a severe fetal abnormality. A physician performing a post-20-week abortion would be required to terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provided the best opportunity for the unborn child to survive.

In a civil or criminal proceeding involving a prohibited abortion under the bill, the identity of the woman would not be subject to public disclosure unless the woman consented or a court found, following a hearing, that disclosure was essential to the administration of justice. The bill would allow court records to be sealed and courtrooms to be closed to prevent the disclosure. It would not authorize the prosecution of a woman on whom an abortion was performed or attempted in violation of the Preborn Pain Act.

The bill would amend the Occupations Code to make it a prohibited practice for a physician to perform or induce an abortion in violation of the 20-week ban. The bill would exempt physicians who violated the Preborn Pain Act from criminal penalties provided under certain provisions of the Occupations Code.

Reporting. CSHB 16 would include among the annual reporting requirements by facilities for each abortion performed the probable post-fertilization age of the unborn child rather than the period of gestation.

Severability. The bill would include language to sever any provision declared temporarily or permanently restrained or enjoined by judicial order from all other provisions of Texas law regulating or restricting abortions, allowing provisions not subject to a judicial order to continue to be enforced.

Findings. CSHB 16 would adopt legislative findings that substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than 20 weeks after fertilization and the state has a compelling interest in protecting the lives those unborn children. The findings would state that restricting elective abortions at or later than 20 weeks post-fertilization does not impose an undue burden because the woman has had adequate time to decide to have an abortion.

Effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the first called session (September 24, 2013, if both houses adjourn sine die on June 25).

SUPPORTERS SAY:

CSHB 16 would recognize advances in knowledge of fetal development that demonstrate unborn children can feel pain at 20 weeks post fertilization and would prohibit abortions at that stage.

The bill would recognize the state's compelling interesting in protecting an unborn child from pain. There is scientific evidence suggesting that a preborn child is capable of feeling pain at 20 weeks post-fertilization because neuroreceptors are functioning.

According to a recent study by the University of Arkansas for Medical Sciences, fetuses undergoing intrauterine invasive procedures were reported to show coordinated responses signaling the avoidance of tissue injury, responses that indicate a response to pain. Sonogram pictures show babies in utero withdrawing from a probe as early as 12 weeks. In addition, doctors sometimes use anesthesia when performing procedures on a fetus in recognition of possible pain.

The 2005 article in the Journal of the American Medical Association cited by opponents is out of date and does not reflect numerous studies done since that time providing evidence that a five-month-old baby in the womb does feel pain.

While banning most abortions after 20 weeks, the bill would make appropriate exceptions for pregnancies that threatened the mother's life or major bodily function and when a severe fetal abnormality was present. It would not be appropriate to make exceptions based on subjective, and possibly inaccurate, evaluations of a pregnant woman's mental state, which could be influenced by hormonal mood swings that many women experience at various times during pregnancy.

The bill would not affect the ability of a woman who became pregnant due to rape or incest from having an abortion. In such unfortunate cases, CSHB 16 would provide sufficient time for a woman to receive an abortion if she so chose.

OPPONENTS SAY:

CSHB 16 would use the disputed claim that fetuses at 20 weeks of development can feel pain to deny women their constitutional right to an abortion.

The U.S. Supreme Court legalized abortion nationwide in 1973 and allowed states to place restrictions on the procedure from the time of viability. CSHB 16 would be unconstitutional because it would ban abortions of fetuses before they were viable outside the womb based on an unproven claim that a 20-week-old fetus can feel pain. The authors of a 2005 article in the Journal of the American Medical Association reviewed

research into fetal development and concluded that the fetus probably does not feel pain before 29 or 30 weeks.

The bill would be subject to constitutional challenges similar to one that resulted in a federal appeals court in May 2013 striking down an Arizona law that bans abortions from 20 weeks' gestation. The court said it was "unalterably clear" under U.S. Supreme Court rulings that women have a right to terminate pregnancies until a fetus is viable. Courts are weighing challenges to similar laws in other states.

Fetal abnormalities often are not detected until a woman is at least 20 weeks into her pregnancy. CSHB 16 could place barriers to an abortion under those circumstances by removing a doctor's discretion to perform an abortion after this deadline.

Unlike Texas law on third-trimester abortions, the bill would not allow an exception based on the pregnant woman's mental health status. It also would not allow exceptions for pregnancies resulting from rape and incest.

NOTES:

The committee substitute differs from the bill as filed in that the committee substitute would refer to "severe fetal abnormality," rather than "profound and irremediable congenital anomaly."

Two other abortion-related bills are on today's Major State Calendar. CSHB 60 by Laubenberg would enact the Preborn Pain Act provisions of CSHB 16 and add new requirements for physicians, abortion facilities, and drug-induced abortions. CSSB 5 by Hegar is the Senate companion to CSHB 60.

SUBJECT: Regulating abortion procedures, providers, and facilities

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 7 ayes — Cook, Craddick, Frullo, Harless, Hilderbran, Huberty, Smithee

1 nay — Farrar

5 absent — Giddings, Geren, Menéndez, Oliveira, Sylvester Turner

SENATE VOTE: On final passage, June 18 — 20-10 (Davis, Ellis, Garcia, Hinojosa, Rodriguez, Uresti, Van de Putte, Watson, Whitmire, Zaffirini)

WITNESSES: (*On House companion, HB 60:*)
For — Jennifer Allmon, The Texas Catholic Conference of Bishops; Carol Everett, Women's Wellness Coalition; MerryLynn Gerstenschlager, Texas Eagle Forum; Ann Hettinger and Cecilia Wood, Concerned Women for America of Texas; Beverly Nuckols, Texas Alliance for Life; John Seago and Kyleen Wright, Texans for Life; and 15 individuals; (*Registered, but did not testify*: Veronica Arnold, Elizabeth Graham, and Emily Horne, Texas Right to Life; Erin Blauvelt, Leah Brown, Rachana Chhin, and Joe Pojman, Texas Alliance for Life; Elizabeth Davidson, Women's Wellness Coalition of Texas; Ferrell Foster, Baptist General Convention of Texas; Jeffery Patterson, Texas Catholic Conference of Bishops; Jonathan Saenz, Texas Values; and 8 individuals)

Against — Hannah Beck, National Organization for Women at UTSA; Anne Budroni, Planned Parenthood; Terri Burke, American Civil Liberties Union (ACLU) of Texas; Elizabeth Burr, Capital Area Democratic Women; Heather Busby and Melissa Nicholson, Naral Pro-Choice Texas; Carolyn Calabrese and Laura Davila, Feminist Austin Networking Group; Matthew Chandler, The Young Democrats at UTSA; Susan Clark, Suburban Southwest Texas Democratic Women; Stacey Edwards, Bluebonnet Brigade; Andrea Ferrigno and Amy Hagstrom Miller, Whole Woman's Health; Chuck Freeman, Texas Unitarian Universalist Justice Ministry; Suzanne Hemphill, The Lilith Fund; Amanda Hernandez, Spring Democrats and Pro-Choice Houston; Tina Hester, Jane's Due Process; Cindy Noland, Faith Action for Women in Need and Catholics for Choice;

Frances Northcutt, Texas State National Organization for Women; and about 85 individuals; (*Registered, but did not testify*: Bryant Andrade, GLBTQ of UTSA; Charles Bailey, Texas Hospital Association; Cardenas and Colleen Loper, Annie's List; Mounir Elharim, Institute for Truth; Lisa Hollier, Texas District of the American Congress of Obstetricians and Gynecologists; Harold Huff, Austin County Democratic Party; Deanna Kilgore, Feminist Austin Networking Group; Jessica Klier and Yunuen Salgado, Austin Women's Health Center; Geraldine Mongold, Faith Action for Women in Need; Peggy Morton, First Unitarian Universalist Church of Austin Social Action Committee; Theresa Norman, Planned Parenthood; Judy Parken, League of Women Voters of Texas; Bijal Patel, Lilith Fund; Fredericka Phillips, Suburban Southwest Texas Democratic Women; Susan Pintchovski, National Council of Jewish Women and Texas State Policy Advocacy Network; Karen Rankin, League of Women Voters; Rico Reyes, Rico Reyes for HD 50; Samantha Riemer, Whole Woman's Health; Blake Rocap, Naral Pro-Choice Texas; Cathryn Snyder, FANG; Jan Soifer, Travis County Democratic Party; Leslie Tisdale, University Democrats at UT; and about 325 individuals)

On — (*Registered, but did not testify*: Lyudmila Baskin and Ellen Cooper, Department of State Health Services; Laureta Sela)

BACKGROUND:

Health and Safety Code, sec. 170.002 prohibits the performance of an abortion on a woman who is pregnant with a viable unborn child during the third trimester unless, in the physician's best medical judgment:

- it is necessary to prevent the woman's death or a substantial risk of serious impairment to her physical or mental health; or
- the fetus has a severe and irreversible abnormality identified by reliable diagnostic procedures.

The 78th Legislature in 2003 enacted HB 15 by Corte, which added Health and Safety Code, ch. 171 (the Woman's Right to Know Act). Sec. 171.004 requires that an abortion of a fetus age 16 weeks or greater be performed at an ambulatory surgical center or hospital licensed to perform the abortion.

Health and Safety Code, sec. 245.010(c) prohibits certain health and safety standards of an abortion facility from being more stringent than Medicare certification standards.

DIGEST:

CSSB 5 would add new requirements to state laws governing abortions, the facilities where abortions are performed or induced, and the distribution of abortion-inducing drugs.

Twenty-week ban. The bill would add subch. C, the Preborn Pain Act, to Health and Safety Code, ch. 171. The subchapter would require a physician, prior to performing an abortion, to determine the probable "post-fertilization age," defined as the age of the unborn child calculated from the fusion of a human spermatozoon with a human ovum. An abortion could not be performed or induced if a physician determined that the probable post-fertilization age of the unborn child was 20 weeks or greater.

The ban would not apply to an abortion required to save a woman's life or to prevent her from suffering an irreversible physical impairment of a major bodily function, other than a psychological condition. The prohibition also would not apply to an abortion performed on an unborn child who had a severe fetal abnormality. A physician performing a post-20-week abortion would be required to terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provided the best opportunity for the unborn child to survive.

In a civil or criminal proceeding arising from a prohibited abortion under the Preborn Pain Act, the identity of the woman would not be subject to public disclosure unless the woman consented or a court found, following a hearing, that disclosure was essential to the administration of justice. The bill would allow court records to be sealed and courtrooms to be closed to prevent the disclosure. It would not authorize the prosecution of a woman on whom an abortion was performed or attempted in violation of the Preborn Pain Act.

Physician and facility requirements. The bill would require a physician performing or inducing an abortion to have active admitting privileges at a hospital providing obstetrical or gynecological health care services that was located within 30 miles of the abortion facility. The physician would be required to provide the woman with emergency telephone contact information for the physician or other health care personnel and the nearest hospital in case of complications. A violation of these requirements would be a class A misdemeanor, punishable only by a fine of $4,000 or less.

Beginning September 1, 2014, the minimum standards for an abortion facility would be equivalent to those for an ambulatory surgical center. The bill would repeal a statutory provision prohibiting certain minimum standards for abortion facilities from being more stringent than Medicare certification standards. The executive commissioner of the Health and Human Services Commission would be required to adopt the new standards for abortion facilities by January 1, 2014.

CSSB 5 would include among the annual reporting requirements by facilities for each abortion performed the probable post-fertilization age of the unborn child rather than the period of gestation.

The bill would amend the Occupations Code to make it a prohibited practice for a physician to perform or induce an abortion in violation of the 20-week ban. The bill would exempt physicians who violated the Preborn Pain Act from criminal penalties provided under certain provisions of the Occupations Code.

Drug-induced abortions. The bill would add a separate subchapter on abortion-inducing drugs such as the Mifeprex regimen, also known as RU-486. A drug, medicine, or other substance that may be known to cause an abortion but that was prescribed, dispensed, or administered for other medical reasons would not be considered an abortion-inducing drug.

An act would not be considered an abortion if done with the intent to:

- remove an unborn child whose death was caused by a spontaneous abortion or to remove an ectopic pregnancy; or
- treat a maternal disease or illness for which a prescribed, drug, medicine, or other substance was indicated.

The bill would prohibit anyone other than a physician from giving, selling, dispensing, administering, or prescribing an abortion-inducing drug to a pregnant woman. Physicians would be required to follow the protocol tested and authorized by the U.S. Food and Drug Administration (FDA) as outlined in the final printed label of the drug, except they could administer the dosage amount prescribed by the clinical management guidelines defined by the American Congress of Obstetricians and Gynecologists Practice Bulletin as those guidelines existed on January 1, 2013.

A physician would be required to provide the woman with a copy of the

label and a telephone number to reach the physician or other health care personnel for questions or to receive medical assistance following any complications. A follow-up visit would be required within 14 days after use of the drug to confirm that the pregnancy had been completely terminated and to assess the degree of bleeding. Doctors would be required to report serious adverse events related to the drugs to the FDA through the MedWatch Reporting System.

The Texas Medical Board would be authorized to take disciplinary action or assess an administrative penalty against a physician who violated the provisions concerning abortion-inducing drugs. A woman who received a medical abortion under this subchapter could not be assessed a penalty.

Severability. The bill would include language to sever any provision declared temporarily or permanently restrained or enjoined by judicial order from all other provisions of Texas law regulating or restricting abortions, allowing provisions not subject to a judicial order to continue to be enforced.

Findings. CSSB 5 would adopt legislative findings that substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than 20 weeks after fertilization and the state has a compelling interest in protecting the lives those unborn children. The findings would state that restricting elective abortions at or later than 20 weeks post-fertilization does not impose an undue burden because the woman has had adequate time to decide to have an abortion.

Effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the first called session (September 24, 2013, if both houses adjourn sine die on June 25).

SUPPORTERS SAY:

CSSB 5 would recognize advances in knowledge of fetal development that demonstrate unborn children can feel pain at 20 weeks post fertilization and would prohibit abortions at that stage. The bill also would improve the standard of care for women seeking earlier abortions.

Fetal pain. CSSB 5 would recognize the state's compelling interesting in protecting an unborn child from pain. There is scientific evidence suggesting that a preborn child is capable of feeling pain at 20 weeks post-fertilization because neuroreceptors are functioning.

According to a recent study by the University of Arkansas for Medical Sciences, fetuses undergoing intrauterine invasive procedures were reported to show coordinated responses signaling the avoidance of tissue injury, responses that indicate a response to pain. Sonogram pictures show babies in utero withdrawing from a probe as early as 12 weeks. In addition, doctors sometimes use anesthesia when performing procedures on a fetus in recognition of possible pain.

The 2005 article in the Journal of the American Medical Association cited by opponents is out of date and does not reflect numerous studies done since that time providing evidence that a five-month-old baby in the womb does feel pain.

While banning most abortions after 20 weeks, the bill would make appropriate exceptions for pregnancies that threatened the mother's life or major bodily function and when a severe fetal abnormality was present. It would not be appropriate to make exceptions based on subjective, and possibly inaccurate, evaluations of a pregnant woman's mental state, which could be influenced by hormonal mood swings that many women experience at various times during pregnancy.

The bill would not affect the ability of a woman who became pregnant due to rape or incest from having an abortion. In such unfortunate cases, CSSB 5 would provide sufficient time for a woman to receive an abortion if she so chose.

Physician and facility requirements. An abortion is a surgical procedure and CSSB 5 would ensure a higher level of care by requiring all abortions to be performed in an ambulatory surgical center. Compared to an ordinary abortion facility, these surgical centers hire more highly qualified professionals and implement more rigorous quality-assurance programs. Ambulatory surgical centers are more often checked for compliance with safety requirements and must be equipped with back-up generators and better air filtration systems. These more frequent inspections could prevent the occurrence of a situation in Texas like the one recently exposed in Philadelphia, in which Dr. Kermit Gosnell was recently convicted of murder after killing babies who were born alive. A patient also died at that substandard clinic.

The bill would give operators of abortion facilities sufficient time to

comply with the new standards, which would not take effect until September 2014. While improving standards comes at a cost, abortion facility operators should be willing to invest some of their profits to ensure the highest level of care for their patients.

Doctors who provide abortions should be required to have admitting privileges at a nearby hospital in case one of their patients suffers complications and needs to be hospitalized. All of the state's existing facilities are within 30 miles of a hospital where they could be admitted, and two-thirds of physicians who perform abortions already have those privileges. The bill would force doctors who did not have hospital admitting privileges to upgrade their standards or stop performing abortions.

Drug-induced abortions. CSSB 5 would ensure the safety of women using RU-486 to induce an abortion by requiring physicians to administer the medication in the manner approved by the FDA, which says the drugs should be taken on two different days at a clinic under a doctor's supervision. Some abortion facilities are sending women home to take the second dosage alone without giving them information about what to do if complications arise.

The bill would ensure that women safely took the drugs and left the facility prepared to contact a physician or other medical personnel, as well as the nearest hospital, in case of emergency. The bill also would protect women by requiring a follow-up visit within 14 days to make sure the pregnancy had been completely terminated.

OPPONENTS SAY:

CSSB 5 would use the disputed claim that fetuses at 20 weeks of development can feel pain to deny women their constitutional right to an abortion. The bill also would make it more difficult for abortion clinics to operate by adding costly new requirements that are not necessary for early abortions.

Fetal pain. The U.S. Supreme Court legalized abortion nationwide in 1973 and allowed states to place restrictions on the procedure from the time of viability. CSSB 5 would be unconstitutional because it would ban abortions of fetuses before they were viable outside the womb based on an unproven claim that a 20-week-old fetus can feel pain. The authors of a 2005 article in the Journal of the American Medical Association reviewed research into fetal development and concluded that the fetus probably does

not feel pain before 29 or 30 weeks.

The bill would be subject to constitutional challenges similar to one that resulted in a federal appeals court in May 2013 striking down an Arizona law that bans abortions from 20 weeks' gestation. The court said it was "unalterably clear" under U.S. Supreme Court rulings that women have a right to terminate pregnancies until a fetus is viable. Courts are weighing challenges to similar laws in other states.

Fetal abnormalities often are not detected until a woman is at least 20 weeks into her pregnancy. CSSB 5 could place barriers to an abortion under those circumstances by removing a doctor's discretion to perform an abortion after this deadline.

Unlike Texas law on third-trimester abortions, the bill would not allow an exception based on the pregnant woman's mental health status. It also would not allow exceptions for pregnancies resulting from rape and incest.

Physician and facility requirements. Early abortions are safer and simpler procedures than those commonly performed in ambulatory surgical centers. Texas women are adequately protected under current law, which requires only those who have been pregnant for 16 weeks or longer to receive abortions in ambulatory surgical centers.

CSSB 5 could result in closed clinics and force women to choose unsafe options. Of the state's 42 abortion clinics, 37 would not meet the ambulatory surgical center requirements, and retrofitting those facilities to meet the new standards would be expensive. According to Whole Woman's Health, it costs an additional $40,000 each month to operate a practice's surgical center compared to its non-surgical centers.

The current surgical centers performing abortions are located in the state's major metropolitan areas. If clinics in other parts of the state closed, it could force women to travel long distances and increase the cost of exercising their constitutional right to an abortion.

It could be difficult for doctors who perform or induce abortions to meet the requirement to have admitting privileges at a hospital with an obstetrical unit located within 30 miles. Some private, religiously affiliated hospitals do not admit physicians who perform abortions.

Drug-induced abortions. Women should not be required to go to an ambulatory surgical center to take abortion-inducing drugs that are currently being safely administered in abortion facilities.

NOTES:

Compared to the bill passed by the Senate, the House committee substitute would:

- add findings about fetal pain;
- add the Preborn Pain Act prohibiting abortions at 20 weeks post fertilization;
- add to the subchapter about abortion-inducing drugs a definition of abortion and remove a requirement that both the physician and woman be present at an abortion facility when the drugs are administered;
- require annual reporting of probable post-fertilization age of the unborn child instead of the period of gestation;
- make performing or inducing an abortion after 20 weeks a prohibited medical practice;
- exempt a violation of the Preborn Pain Act from certain criminal penalties; and
- add language that if the Preborn Pain Act was found by any court to be invalid or to impose an undue burden as applied to any person, group of persons, or circumstances, that the ban would be applied on the earliest date it could be constitutionally applied.

Two other abortion bills are on today's Major State Calendar. CSHB 60 by Laubenberg is the House companion to CSSB 5, and CSHB 16 by Laubenberg contains the Preborn Pain Act provisions of CSSB 5.

SUBJECT: Dedicating a portion of Rainy Day Fund revenue to transportation

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 23 ayes — Pitts, Sylvester Turner, Ashby, Bell, G. Bonnen, Crownover, Darby, S. Davis, Dukes, Giddings, Howard, Hughes, S. King, Longoria, Márquez, Muñoz, Orr, Otto, Patrick, Perry, Price, Raney, Ratliff

1 nay — Carter

3 absent — Gonzales, McClendon, Zerwas

SENATE VOTE: On final passage, June 18 — 30 - 0

WITNESSES: For — George DeMontrond and Max Jones, The Greater Houston Partnership; Rider Scott, Dallas Regional Mobility Coalition; A.J. Widacki, Transportation Advocacy Group; (*Registered, but did not testify:* Victor Boyer, Self; San Antonio Mobility Coalition, Inc.; Gary Bushell, Alliance for I 69 Texas and US 190 Gulf Coast Strategic Highway Coalition; C. Brian Cassidy, Alamo RMA, Camino Real RMA, Cameron County RMA, Central Texas RMA, Grayson County RMA, and North East Texas RMA; Deece Eckstein, Travis County Commissioners Court; Les Findeisen, Texas Motor Transportation Association; Stephen Minick, Texas Association of Business; Seth Mitchell and Luis Saenz, Bexar County; Jennifer Newton, AGC of Texas; Lawrence Olsen, Texas Good Roads Association; Craig Pardue, Dallas County; Beth Ann Ray, Austin Chamber of Commerce; Shawna Russell, The Fort Worth Transportation Authority; Chris Shields, The Greater San Antonio Chamber of Commerce; Steve Stagner, American Council of Engineering Companies of Texas; Ray Sullivan, HNTB; Michael Vasquez, Texas Conference of Urban Counties)

Against — None

On — Phillip Ashley, Texas Comptroller of Public Accounts; Ted Melina Raab, Texas AFT; Phil Wilson, Texas Department of Transportation; (*Registered, but did not testify:* James Bass, Texas Department of Transportation; John Heleman, Texas Comptroller of Public Accounts)

BACKGROUND:

Art. 3, sec. 49-g of the Texas Constitution establishes the Economic Stabilization Fund, which was ratified by voters in 1988. The fund, also known as the Rainy Day Fund, receives general revenue equivalent to 75 percent of any oil or natural gas production tax revenue that exceeds the amount collected in fiscal 1987. Additionally, the comptroller must transfer one-half of any unencumbered balance remaining in the General Revenue Fund at the end of a fiscal biennium to the Rainy Day Fund.

The amount in the Rainy Day Fund may not exceed 10 percent of the total amount of general revenue deposited during the preceding biennium.

DIGEST:

SJR 2 would direct the comptroller to allocate to the State Highway Fund (Fund 6) one-half of the general revenue currently transferred to the Rainy Day Fund. The comptroller would reduce or withhold allocations to Fund 6 as necessary to maintain an anticipated balance of $6 billion in the Rainy Day fund after constitutionally required transfers.

Revenue transferred to Fund 6 could be used only for constructing, maintaining, and acquiring rights-of-way for public roadways. SJR 2 would allow Fund 6 funds, aside from amounts transferred under its provisions, to be used to repay the principal and interest on $5 billion in general obligation bonds for highway improvement projects authorized in 2007 (Proposition 12).

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: "The constitutional amendment to provide for the transfer of certain general revenue to the economic stabilization fund, to provide for the transfer of certain general revenue to the state highway fund and the dedication of that revenue, and to authorize the payment of the principal and interest on certain highway improvement bonds from other money deposited to the state highway fund."

If approved by voters, SJR 2 would take effect January 1, 2014, and would apply to a revenue transfer under the bill on or after that date.

SUPPORTERS SAY:

SJR 2 would take a key step toward securing critical funding for transportation projects in Texas. While far from a cure-all, the proposed resolution would present a politically viable means to secure a portion of the funding Texas needs to maintain roadway congestion at current levels,

given population and economic growth. Although many options for highway funding have been discussed in the past three legislative sessions, these have not proved politically feasible.

SJR 2 would generate an estimated $880 million for public highways in fiscal 2015, increasing to $1.1 billion in fiscal 2018. This steady revenue stream would send a message to citizens, crediting bureaus, and businesses that the state is serious about financing critical transportation infrastructure.

Dedicated funding stream for public roads. SJR 2 would dedicate an additional, much-needed funding stream to constructing and maintaining public roads. If approved, the amendment would represent a sharp departure from relying on debt and toll roads as primary mechanisms for funding highways. The amendment would make use of expected increases in oil and gas severance tax remissions to both increase funding for highways and retain a solid reserve.

Texas since 2001 has relied on enhanced authority to issue bonds, borrowing from public and private interests, and concessions payments from private comprehensive development agreements (CDAs) to build and maintain toll roads. These approaches, while an important part of the highway funding mix, will not by themselves be able to meet the growing demands the state is placing on transportation infrastructure.

As of fiscal 2013, TxDOT had used a total of $13 billion in bond authorization, with $4.9 billion in authorized bonds yet to be used. Issuing these bonds will cost the state $32.5 billion in total debt service. The agency's main bond programs — State Highway Fund bonds, Texas Mobility Fund bonds, and general obligation highway bonds — are, for all intents and purposes, exhausted.

The ongoing crisis in highway funding in Texas has been delayed several years — first by federal American Revitalization Act funds, and second by a $5 billion general obligation bond appropriation made in fiscal 2009 and 2011. These infusions may have helped put off the transportation funding crisis a few years, but one-time measures are no remedy for terminal ills.

One time infusions do little to instill confidence that the Legislature is willing and able to make tough policy decisions to provide the infrastructure necessary for vibrant business activity, national and

international trade, and a superior quality of life. SJR 2 would enable voters to show they are serious about increasing funding for critical infrastructure.

Credit rating. Contrary to claims otherwise, dedicating a revenue stream for key transportation infrastructure would help the state retain its strong credit rating. Instead of looking at a particular number or percentage, credit rating bureaus look for a balance between maintaining a healthy amount in reserve for unexpected events and using reserve funds for critical needs such as infrastructure and water. SJR 2 would strike this balance by appropriating funds for transportation only when there was a substantial balance in reserve for emergencies.

Public approval. If SJR 2 were enacted by the Legislature, it still would need to be approved by a majority of Texans in November. This would provide a valuable opportunity to educate the public about the conditions of the state's roads and the need for enhanced funding for transportation infrastructure. Given that those who would be involved in promoting the initiative would be supporters of transportation funding, they would have a vested interest in ensuring that the public did not get the false impression that the measure would wholly satisfy the state's transportation funding needs.

Six billion dollar floor. While SJR 2 would authorize a dedicated funding stream for transportation projects, it also would ensure a minimum balance in the Rainy Day Fund was available to respond to natural disasters and fiscal emergencies. Establishing a floor would be an important recognition of the widespread agreement among citizens and credit bureaus that the state should retain a sufficient balance in reserve for unforeseen events. While some have argued a floor between $3 billion and $5 billion would be ample, the $6 billion floor proposed in SJR 2 appropriately would err on the side of ensuring the state had a robust balance in reserve before allocating any money to Fund 6.

The $6 billion floor is preferable to an amount determined by a percentage, because the fixed amount would provide greater predictability — an important factor in transportation finance — while presenting a clear figure that would help voters decide whether to support or oppose the measure. Any benefits of a floor based on a percentage would be significantly outweighed by the inherent confusion and uncertainty of an ever-changing figure. The fixed $6 billion floor, while not perfect, is the

best option among the alternatives.

Although it likely would not be possible to make long-term predictions of available transportation revenue, this would not stop the funds from being used to finance critical road projects. TxDOT in recent years and on several occasions has proved able to commit significant, one-time cash infusions even when it lacked data for advance planning.

OPPONENTS SAY:

SJR 2, while an interesting concept, would not provide a solution to the state's serious, ongoing highway funding shortage.

No additional revenue. Because the proposed amendment would not authorize the collection of any additional revenue, in effect it would take money out of one fiscal pocket and move it to another. While this might not cause problems in times of plenty, it could create some difficult choices in trying fiscal times. There was strong resistance during the 83rd Legislature's regular session to allowing the Rainy Day Fund to drop below a certain amount, generally perceived to be about $6 billion. Reluctance to drain the account below that base level, coupled with the 50 percent dedication to highways proposed in SJR 2, could leave the Legislature with effectively little to spend for emergency purposes.

Prioritizing transportation. The amendment would dedicate funds to transportation that are now available for general purpose spending, including core priorities such as public education. The state has needs in many areas of priority, and dedicating funds only to transportation would have the effect of elevating transportation above all other needs. This preference would become salient in the event that the state experienced another fiscal downturn and lawmakers were forced to choose to fund other priorities with less in reserve.

In addition, the dedication to transportation would reduce the likelihood that the state would reach the Rainy Day Fund ceiling of 10 percent of the total amount of general revenue deposited during the preceding biennium, after which that revenue would otherwise be made available for general-purpose spending.

False impressions. SJR 2, which would have to be approved by voters, could create the impression among the general public that this measure would be a remedy for the state's transportation funding woes. Because the measure would require a statewide vote, there likely would be a lot of

campaigning about the need to fund transportation. It would be difficult to campaign to achieve success for the measure at the polls without also spreading the false notion that this measure would cure transportation funding ills. If SJR 2 were to pass, it would risk creating the same false expectations for transportation funding as the Texas Lottery did for funding public education.

Credit rating. A strong balance in the Rainy Day Fund has been a great asset to the state, helping it retain a strong credit rating through the recession. Any measure that reduced the state's savings account could directly or indirectly harm its credit rating down the road by leaving less revenue in reserve for emergencies.

OTHER OPPONENTS SAY:

While SJR 2 is a necessary measure to secure dedicated funding to transportation, the $6 billion floor for allocation is arbitrary and would create other problems.

Planning problems. Establishing a floor of $6 billion would mean that transportation planners could not count on receiving any Rainy Day funds more than a year or two into the future, because the receipt of those funds would depend on unpredictable factors, such as legislative appropriations for emergencies. As currently drafted, SJR 2 would create a dedicated but not a reliable source of funding for transportation.

***De facto* minimum balance.** If SJR 2 were approved with the $6 billion minimum floor in the Constitution, it would likely set a *de facto* minimum balance for the Rainy Day Fund. If approved, there would be great hesitation to drain the account below $6 billion and a strong incentive for advocates of transportation funding to keep it above that amount. Establishing a *de facto* minimum balance for the Rainy Day Fund could significantly reduce flexibility during a fiscal squeeze.

Percentage would be superior. Identifying a fixed dollar amount of $6 billion would be problematic. Fixed amounts are subject to long-term depreciation caused by natural inflationary tendencies. In 20 years, for example, the fixed amount would have a much different effect than it has now. A much better option would be to base the floor on a percentage of revenue that would be subject to biennial variations.

NOTES:

The LBB estimates the proposed amendment would dedicate $878.6 million for Fund 6 in 2015, $932.4 million in fiscal 2016, $986.2 million

in fiscal 2017, and $1.1 billion in fiscal 2018. The corresponding losses to the Rainy Day Fund would exceed the gains to Fund 6 due to a loss of projected interest earnings.

The LBB estimates the cost to the state for publishing the resolution would be $108,921.