
Vetoed of Legislation

79th Legislature

Gov. Rick Perry vetoed 19 bills approved by the 79th Legislature during its 2005 regular session. The vetoed measures included eight House bills and 11 Senate bills.

This report includes a digest of each vetoed bill, the governor's stated reason for the veto, and a response concerning the veto by the author or the sponsor of the bill. If the House Research Organization analyzed a vetoed bill, the *Daily Floor Report* in which the analysis appeared is cited.

A summary of the governor's line-item vetoes to SB 1 by Ogden, the general appropriations act, will appear in the upcoming House Research Organization State Finance Report Number 79-3, *The General Appropriations Act for Fiscal 2006-07*.

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Deadlines for paying consumer rebates

HB 511 by Hochberg (Van de Putte)

DIGEST:

HB 511 would have required companies that offer mail-in rebates to pay consumers within the promised time or, if no time period was specified, no more than 30 days after receiving a properly executed rebate form. For improperly completed rebate requests, the company would have had to notify the consumer within the time allotted for paying the rebate and offer an opportunity to correct the rebate request within 30 days of the notification. A company that inappropriately rejected a rebate application would have had 30 days after discovering the mistake to pay the rebate. A violation of the rebate payment requirements would have been considered a deceptive trade practice as defined by Business and Commerce Code, ch. 17.

GOVERNOR'S REASON FOR VETO:

“Under House Bill No. 511, businesses offering consumer rebates which take more than 30 days to process would be subjected to potential class action lawsuits under the Deceptive Trade Practices Act. This is an unreasonably short period of time, which could subject companies with reasonable procedures for paying rebates to endure expensive and lengthy litigation. These lawsuits could include claims for mental anguish, treble damages and attorneys’ fees, an overly broad and onerous remedy that does not differentiate between companies that withhold rebates unfairly from those that have reasonable payment processes that take more than 30 days.

“Under the guise of consumer protection, this bill would vastly expand class action lawsuits without a direct relationship to demonstrable harm. In these instances, the end result of this bill would be to make the litigation so expensive and so risky that a company could be compelled to pay a large settlement even if it has not harmed anyone.

“The company would also be susceptible to lawsuits if it employs a different procedure for helping consumers fix incorrectly completed rebate applications than the procedure set forth in the bill, or if its notice to a consumer that he has submitted false proof of purchase takes more than 30 days to arrive. The bill also allows retailers to be sued, even though they do not control the mailing of the rebate.

“We want to encourage companies to offer the best prices to Texas consumers. This bill would result in companies offering rebates to consumers in other states, but making them void in Texas.

“Consumer protection laws should not be used as a pretext for the vast expansion of class action and other ‘big ticket’ lawsuits which lead to higher insurance and litigation costs for employers and higher prices to Texas consumers.”

RESPONSE:

Rep. Scott Hochberg, the bill’s author, said “Gov. Perry’s unfortunate veto of HB 511 means that electronics companies will continue to cheat Texas consumers out of millions of dollars in rebates to which they are entitled. This bill was carefully written to provide clear guidelines for companies making rebate offers and to hold those companies responsible when they fail to do what they promise.

“Contrary to the veto proclamation, the bill did not require a company to pay its rebates within 30 days. Rather, it required the companies to pay the consumer within whatever time period the company promised in the rebate offer. The 30-day provision would have only applied if a company did not specify what the time period would be. I wrote this provision to match the Federal Trade Commission rule on rebates at the specific request of representatives of the electronics industry.

“Rebates are an increasingly popular method of enticing consumers to buy expensive electronics. Often, the promised rebate equals as much as two-thirds of the original price, which can be hundreds of dollars. While many rebate programs work well, some companies do not meet their obligations. Many customers never receive a response to their rebate request. Currently, the only option for the frustrated consumer is to lodge a complaint with the Better Business Bureau or the attorney general.

“Rebates have become such a huge consumer headache that one major electronics retail chain has announced it will phase out rebate offers over the next two years. Another has been placing the words ‘no rebate required’ prominently in its sale ads. But that does nothing for a consumer who, in good faith, purchases products in anticipation of a rebate and is left with empty pockets.

“After the bill was introduced, I worked extensively with industry, up until the end of the legislative session, to include many provisions that they felt were important and necessary. The bill was quickly voted out of both the House and Senate committees and chambers with overwhelming support, even by those who have been strong supporters of limiting lawsuits. I was, in fact, encouraged by many members to make the bill even stronger.

“The governor says he would like to encourage companies to offer the best prices to Texas consumers. But offering the best prices is of little help to Texas consumers if they end up paying a far higher price because they are unable to collect the rebates they are owed.”

Sen. Leticia Van de Putte, the Senate sponsor, said: “I am disappointed that Gov. Perry chose to veto HB 511, Rep. Hochberg’s Consumer Rebate Bill. I believe it is reasonable for consumers to expect to get what they’re promised from retailers and within a reasonable timeframe. HB 511 was a carefully crafted compromise that would have protected consumers by encouraging accountability among businesses offering rebate programs. Without this bill, Texans will continue to have frustratingly little recourse against this type of injurious business practice.”

NOTES: HB 511 was analyzed in the April 27 *Daily Floor Report*.

Retroactive “street time” credit for parole revoked before September 1, 2001

HB 1896 by Hodge (Whitmire)

DIGEST: HB 1896 would have extended provisions in current law that give certain categories of non-violent offenders who have their parole revoked credit toward their sentences for the “street time” they spent on parole. The law would have been extended to parole revocations that occurred before September 1, 2001, in addition to on or after that date, as in current law.

**GOVERNOR’S
REASON FOR
VETO:**

“House Bill No. 1896 would retroactively allow the crediting of time served on parole to certain felons who are returned to prison after their parole or mandatory supervision is revoked. This would effectively shorten the length of prison time an offender serves.

“Retroactively crediting parolees who have been revoked from parole with time served on the street prior to revocation is tantamount to rewarding bad behavior. Furthermore, it is dangerous public safety policy.”

RESPONSE:

Rep. Terri Hodge, the bill’s author, said: “I am disappointed Gov. Perry chose to veto HB 1896. I fear this was done due to a lack of understanding on his part as to what exactly this bill would have done. This bill would have created an equitable system within the Texas Department of Criminal Justice by allowing non-violent offenders who had successfully completed 51 percent of their parole, mandatory supervision, or conditional pardon, before being revoked for a technical violation and not a new conviction prior to September 1, 2001, to be treated the same as nonviolent offenders whose parole was revoked after September 1, 2001.

“Gov. Perry said that, if passed, HB 1896 ‘would effectively shorten the length of prison time an offender serves.’ This is not true. Once an offender becomes eligible for parole, only the parole board determines the length of time an offender serves in prison. HB 1896 dealt with the accreditation of street time. Street time is served by an offender in the community while under the supervision of the parole division and only after they have been released to the community by the parole board.

“HB 1896 specifically addressed the effective date of a bill, HB 1649 from the 77th regular session, which is now law. Simply put, HB 1649 allowed street time credit for an offender on parole who served 51 percent of their time on community supervision, before their parole was revoked due to a technical violation and not a new conviction, only to serve their remaining sentence in prison. If the said offender failed to serve 51 percent of their community supervision and their parole was revoked, then the offender would be returned to prison to serve their entire sentence.

“Gov. Perry said HB 1896 if passed is ‘tantamount to rewarding bad behavior’ and that it is dangerous public policy. I find that statement confusing, considering Gov. Perry had no problem signing HB 1649 into law on June 14, 2001.”

Sen. John Whitmire, the Senate sponsor, said he was disappointed because the bill could have helped the state deal with overcrowding in its correctional facilities.

NOTES:

HB 1896 was analyzed in Part Two of the May 11 *Daily Floor Report*.

Revising probation/community supervision

HB 2193 by Madden (Whitmire)

DIGEST: HB 2193 would have revised the state's probation (community supervision) system.

Length of probation terms. HB 2193 would have reduced from 10 years to five years the initial probation and deferred adjudication terms that judges can impose for third-degree felonies that are not "3g" or sex offenses. ("3g" offenses are certain violent and serious crimes listed in Code of Criminal Procedure, art. 42.12, sec. 3g.) These probation terms could have been extended up to 10 years through a maximum of five one-year extensions. HB 2193 would have kept the 10-year maximum period of probation and deferred adjudication for offenders guilty of "3g" felony offenses, offenses that result in a person having to register as a sex offender, and for first- and second-degree felonies.

HB 2193 would not have changed the minimum or maximum probation terms for state jail felons. The bill would have repealed certain minimums, maximums, and extensions for probation terms that could be given to some sex offenders. It would have expanded the mandate that some low-level state jail drug offenders be placed on probation to include state jail felons with previous state jail drug offenses that were punished as misdemeanors. HB 2193 would have prohibited a person convicted of murder from receiving jury-recommended probation.

Mandatory review for possible reduction or termination of probation. Judges would have been required to review defendants' records and consider whether to reduce or terminate probation after defendants had served one-half of their sentences. Judges would have retained their current authority to reduce or terminate probation terms after the lesser of one-third of the term or two years. HB 2193 would have applied provisions on early termination to state jail felons but made "3g" defendants ineligible for early termination. It would have continued the prohibition on early termination for offenders subject to the state's sex offender registration laws.

Giving credit against a sentence. HB 2193 would have made changes in the laws governing when judges had to give probationers credit for time spent in court-ordered residential treatment programs or facilities.

Community service. HB 2193 would have given judges discretion about whether to require probationers to perform community service, a change to the current mandate that all defendants be required to do so.

Drug courts. HB 2193 would have required more counties to establish drug courts, but the requirement would have taken effect only if a county received federal or state funding for the courts. The requirement to establish drug courts would have been applied to counties with populations of at least 200,000, rather than the current 550,000. HB 2193

would have authorized a new \$50 fee to fund the state’s drug courts, which would have been charged to defendants convicted of driving while intoxicated and other intoxication, alcoholic beverage, and drug offenses. Counties would have been able to keep 10 percent of the fee.

**GOVERNOR’S
REASON FOR
VETO:**

“House Bill No. 2193 would reduce the maximum period of probation for certain third degree felonies from 10 to 5 years. This bill would shorten the probation for those who are convicted of assault on a peace officer and taking a weapon away from a peace officer. I will not sign legislation that reduces penalties for offenses against law enforcement officers.

“This bill would also reduce the maximum period of probation for offenses such as kidnapping, injury to a child, repeated spousal abuse, intoxication assault and habitual felony drunk driving. These are serious crimes and I do not believe Texas should reduce probationary sentences for offenders who endanger the lives of others in such crimes.

“House Bill No. 2193 would also add court fines to expand drug courts in Texas; however, there was no appropriation of these new revenues and the intended purpose would not be funded.

“Attempts to improve this legislation that would have provided greater public safety were rebuffed, ensuring a flawed piece of legislation that would endanger public safety made it to my desk instead of one that could have made needed improvements to our probation system.

“This legislation has raised concerns from many on the front lines of prosecuting these crimes, and I can only conclude their opposition stems from good cause.

“Senate Bill No. 1, the Appropriations Bill, provides \$55 million in additional funding for probation officers, which will help reduce their caseloads, and I support that funding.”

RESPONSE:

Rep. Jerry Madden, the bill’s author, in a letter to the governor, said: “I am disappointed with your veto of HB 2193. It was a well tuned and balanced bill that would have improved the state probation system. The changes were sensible, realistic and economical ways to enhance public safety. Passage of the bill would have allowed our probation resources to be properly used on the most dangerous probationers.

“The bill was supported overwhelming by both houses, and had only one person testify against it throughout the process. The provisions of the bill were the result of six consecutive years of study through interim legislative charges. During that time, the

Judicial Advisory Council and the Criminal Justice Assistance Division (CJAD) sought the opinions of all judges, prosecutors, defense attorneys and probation professionals on all of the issues in the bill and each provision received the overwhelming support of each group. Additionally, there was a great amount of statistical research that was used throughout the development of the bill.

“Considering that neither you or a representative of your office attempted to discuss this legislation with the author prior to vetoing the probation bill, there are some things in your public proclamation that I feel need to be addressed and publicly corrected.

“Your proclamation states that attempts to modify the bill to improve public safety were rebuffed. It is my recent understanding that your office presented recommendations to Sen. Whitmire the day he heard the bill in the Senate Committee; however, this amended version of the bill was never brought to the author’s attention. Subsequent discussions indicate that your efforts were made only in the Senate after the bill had passed through the House chamber.

“Governor, I feel that it is legislative courtesy that attempts to change the bill are at least discussed with the author of the bill. The changes your office proposed were never discussed with the author. While the Senate is clearly capable of altering legislation in their own chamber, on a bill of this magnitude and importance it is only correct to hold open discussion of proposed changes.

“The bill was developed by the House Committee on Corrections and any legitimate attempts to alter the bill were seriously considered on the House side. Several recommendations were accepted and I never rebuffed reputable attempts that would have provided greater public safety. I worked with some concerned legislators and the Texas District and County Attorneys Association before House floor debate and brought to the floor a five page amendment accommodating their concerns.

“Moreover, before bringing the bill to the floor, I met with the District Attorney for Williamson County. I considered his recommendations and incorporated some of them into the bill, including notification for district attorneys when a probation official identifies a probationer as eligible for mandatory review. Another constructive recommendation was an amendment brought to us by Rep. Keel that eliminated state jail felonies and first and second degree felonies from the list of offenses that would have a shortened probation term. This was the most serious and significant proposed suggestion to the bill, and it was accepted by the author.

“Let me state to you specifically that no one brought to us a problem of assaulting a peace officer. Had someone from your office addressed the author of the bill with this concern prior to your veto, I would have been more than happy to explain it to you. It appears to me to be a bad job by the prosecutor if someone who seriously assaults

a peace officer or takes away a peace officer's weapon receives probation. A third degree assault on a peace officer requires infliction of a minimum amount of pain – but no injury. Second degree assault on a peace officer requires serious bodily injury be inflicted. Suspended sentence probation as well as deferred adjudication probation have been available for both of these offenses for over 20 years. As I am sure you are aware, there are different degrees of assault, and a defendant who seriously assaults a peace officer should not receive probation.

“As for reducing the maximum levels of probation, HB 2193 did not simply shorten probation terms, it required more judicial involvement. Any offender that currently is punished with 10 years of probation could have had 10 years of probation under HB 2193 because the judge had the ability to extend the probation term by up to five years. Judicial involvement would have been increased under HB 2193 because it would have been mandatory that the judge review the defendant upon completion of one-half of the probation term if all other terms of probation had been met.

“Concerning the added court fines to expand drug courts in Texas, I agree with you that there was no appropriation of these new revenues and the intended purpose would not be funded. However, since there was a problem with the appropriations bill, we will be back in 2007 to address drug courts.

“Same as you, I also support and encourage added probation funding. However you were incorrect in your proclamation when you stated that the appropriations bill provides \$55 million in additional funding for probation officers. The appropriations bill provides \$28.2 million in additional funding for probation officers and \$27 million for residential treatment and sanction beds. Although \$28.2 million will assist in easing the strain on our probation system, it is merely pennies in the bucket. Reducing caseloads through additional funding is not enough to make our probation system effective. The state needed real probation reform – the state needed HB 2193.

“While on the subject of the budget, it is important that I bring to your attention the effect your line item vetoes in SB 1 will have on our criminal justice system. Last week I was informed that our prisons have reached capacity and that the Texas Department of Criminal Justice (TDCJ) will be contracting 575 new beds in our county jails. Today I learned that you have line item vetoed \$19.2 million dollars in new funding for TDCJ to contract these beds from county jails. This trend of contracting with county jails will continue as our system continues to put nonviolent criminals behind bars for technical revocations.

“Additionally, \$6.5 million was vetoed from CJAD that provided Treatment Alternative and Incarceration Programs (TAIP). Throughout the legislative process this session, all interested parties have noticed we need additional funding for treatment. This veto

furthering our crisis and need for additional funds for treatment in our criminal justice system. Denial of these treatment resources will only result in more low level drug offenses going to an already overloaded and expensive prison.

“Finally, I would like to point out some aspects of the bill that are in fact very conservative:

1. The bill would have made it impossible for a jury to give probation in a first degree murder case. Current law prevents a judge from suspending a murder sentence and granting probation. There certainly wasn't anything soft in this provision.
2. The bill would have required review of most probationers when they completed one-half of the supervision period and all other terms of their probation, with the judge retaining full authority to continue them under supervision if they pose any danger to public safety. Current law permits a judge to grant early release to many probationers when they have completed one-third of their supervision period or two years, whichever is less. The bill would have required review after one-half of the supervision period and those offenders would have thus been under supervision longer than is permitted in current law.
3. As of now, roughly 20 percent of our probationers are absconders. The proposal that you have vetoed would have strengthened the probation system by redirecting scarce resources to more dangerous offenders as well as probationers that have fled. HB 2193 would have allowed the review and release of low level third degree felons who fully complied with supervision rules so that probation officers could concentrate on finding and supervising the first, second, and third degree felony absconders who are currently in our communities without any supervision or sanctions whatsoever. Wouldn't it make more sense to supervise them, rather than those who have successfully followed the rules? Thus, the bill would have made our communities safer.
4. This bill would have allowed judges to use more discretion within their communities, and would have expanded the extremely popular and successful drug courts from our eight largest counties to our 20 largest counties. Your veto of this bill eliminated the mandatory drug court provisions. These courts have been extremely successful in reducing crime across Texas and the nation and those results come at a minimal cost.
5. The bill would have reduced the initial supervision period for some third degree felons from 10 years to five years, with the judge having full authority to extend the period up to 10 years if necessary. The supervision for serious and violent offenders would have remained unchanged.

“In closing, I would like to bring to your attention the fact that the Governor’s Office representative that was responsible for covering the House Committee on Corrections never attended a public or formal hearing. Moreover, she never offered input or recommendations to the committee on any piece of legislation, including the probation bill which you have now decided to veto.

“I offer you this information because among the objections that you raise in your public proclamation you state, ‘attempts to improve this legislation that would have provided greater public safety were rebuffed, ensuring a flawed piece of legislation that would ... have made needed improvements to our probation system.’ I find it interesting that you clearly state that improvements to our probation system are needed (which is of course why this bill was drafted in the first place), and yet the author of this bill was never given any amendment or recommendation by the Governor’s office concerning the probation bill.

“It is my hope that you take into consideration six years of hard work and dedication by both the Corrections and Criminal Justice Committees and work with us to improve community supervision in the future. We are working on this bill at the present time and we will continue to look at legislation that will make much needed improvements on the probation system, including concerns that you expressed in your veto.

“As it has always been, my office is open to you and your staff as we continue to work on these issues throughout the interim.”

Sen. John Whitmire, the Senate sponsor, said he concurred with Rep. Madden’s comments.

NOTES: HB 2193 was analyzed in Part One of the May 12 *Daily Floor Report*.

Revising standards for contracts for government construction projects

HB 2525 by Callegari (Lindsay)

DIGEST: HB 2525 would have brought contracting methods of school districts, universities, government entities, and local government entities under one statute in the Government Code. It also would have permitted all methods of contracting, except design-build, to be used for any improvement to real property. Use of the design-build method would have remained limited to buildings.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 2525 would discourage competition in public sector capital project development by limiting how government may contract for design and construction services. The limitations and extra contracting requirements contained in this bill would likely result in increased costs and project delays for taxpayers.

“The bill requires government entities to contract independently for construction materials engineering, testing, and inspection services, which will drive up costs for a number of public projects such as school construction.

“Restricting the ability to use ‘turnkey’ contracts and requiring certain procurement processes serves to benefit segments of private industry over the public interest. Capital improvement projects funded by tax dollars should benefit from the same free market competition as the private sector.”

RESPONSE: Rep. Bill Callegari, the bill’s author, said: “I am very disappointed that the bill was vetoed by Gov. Perry. This bill consolidated several existing chapters of statute into one, making it easier for people to read and understand. Furthermore, it was my understanding that the bill did not make any substantive changes to existing law, merely consolidated existing chapters into one.”

Sen. Jon Lindsay, the Senate sponsor, said: “HB 2525 was an attempt to consolidate four existing procurement statutes into one chapter of the Government Code and, contrary to the governor’s veto proclamation, the bill would have expanded the number of entities that would have been able to use alternative project delivery methods on certain construction projects. The bill was the result of several entities working together to apply uniform guidelines to all those wanting to pursue governmental construction projects and I believe the end product was good public policy that would have ultimately saved the taxpayers money. Therefore, I do not believe this issue should die along with the bill and would hope that it is studied during the interim.”

NOTES: HB 2525 was analyzed in Part Two of the May 9 *Daily Floor Report*.

Local mental health and mental retardation authorities serving as providers

HB 2572 by Truitt (Janek)

DIGEST: HB 2572 would have permitted local mental health and mental retardation authorities to serve both as state contractors and as service providers. Local mental retardation authorities also could have served as providers of intermediate care facility services (ICF-MR) or related waiver services if they were qualified service providers or as providers of last resort.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 2572 is the latest of several efforts over the years to revise the system by which mental health and mental retardation (MHMR) services are provided at the local level. One of the key concerns has been that under the current system, 41 local MHMR authorities have an inherent conflict of interest because they not only control the funds distributed in their local areas, they also provide services. Consumers of MHMR services contend that arrangement has limited their ability to select providers and services.

“House Bill No. 2572 fails to adequately address the conflict, but more importantly it undermines the goals of more effectively delivering services, providing greater options for persons who need services, and creating more opportunity for private providers to participate in the system.

“Current law (Section 533.035 Health and Safety Code) addresses this same concern in a manner that provides greater consumer choice of services and promotes the development of a more effective system of services. This current law also promotes greater participation by private providers. A true market oriented approach is ultimately better for Texans dependent on these services. A market-oriented approach also is better for the taxpayers who fund those services because it puts consumers in better control of the services they receive by affording them greater options. I believe that this current law, when implemented, will build a stronger mental health and mental retardation system with greater choice for consumers.”

RESPONSE: Rep. Vicki Truitt, the bill’s author, said: “Many Texans are disappointed about the Governor’s veto of HB 2572, including consumers, service providers, community leaders throughout the state, and members of the Texas Legislature.

- HB 2572 passed third reading with 130 aye votes in the House, and unanimously in the Senate.
- HB 2572 Conference Committee Report passed in the House with 147 aye votes, and unanimously in the Senate

“HB 2572 was the product of more than a year’s worth of negotiations between private providers and Mental Health and Mental Retardation Centers, i.e., the parties who best know what resources are available at the local level and how they are most effectively delivered. It was enthusiastically supported by the Texas Council of MHMR Centers, the Private Providers Association of Texas and the Association of Retarded Citizens of Texas.

“My greatest concern is that the veto of HB 2572 will damage or destroy the local safety nets for MHMR services. A forced implementation making Centers the 'provider of last resort' can result in a situation that makes their provision of crucial services financially unviable. While I wholeheartedly support the proliferation and success of private providers, they can and routinely do go bankrupt or abruptly leave service areas. In the event that this happens, and the local MHMR center has not been allowed to provide services because there had been a private provider(s) delivering the services, who then would be adequately prepared to step in on a moment’s notice and provide essential services that were abandoned by the private provider?

“The current system has – statewide – some of the best results in the United States, with one of the lowest overall costs to the state. This is because local people direct local resources using local networks of locally provided services. It works well because it is community-based.

“HB 2572 would have enhanced expectations and provided greater accountability of those MHMR centers and authorities whose performance and efficiency need improvement.

“If the Legislature’s intent of HB 2572 (conveyed through its overwhelming passage) is ignored, and the essence of HB 470 (which failed to pass in both the House and the Senate) is enacted by agency rule, there could be significant negative consequences to the vulnerable people and families served by MHMR services throughout the state.

“There seems to be a determined effort at the state level to strip local control and authority and move locally negotiated contracts to the Health and Human Services Commission, which, by the way and according to our own state auditor, has a dismal record of managing contracts.

“I believe the intent of the ‘cookie cutter’ approach to mental health services that ‘HB 470-type rules’ would enable will pave the way for a statewide HMO model of MHMR service delivery. Such action will eliminate local innovation, ownership, and pride in services. It will result in greatly reduced local funding, which currently provides over \$100 million statewide, counting both local government and philanthropic donations. It will also erode the number and quality of service providers, unless provisions are enacted to protect service providers from unilateral rate cuts. Too few providers, or poor quality providers, is detrimental to those who need and depend upon these services.

“Delivery models need not be ‘identical’ throughout the state in order to be effective. In fact, quite the contrary is true and needed to accommodate the variety of characteristics and individual community needs. Local community input and participation is essential for the success of any service model and must not be overridden by state authority.

“HB 2572 would have slowed the implementation of agency and staff-driven initiatives, and forced the assessment of local impacts on communities prior to implementation.

“HB 2572 would have ensured that state money would be used for direct services, rather than funding another layer of administration and administrative costs. The exclusively fee-for-service model the agency has repeatedly said it intends to implement this year will result in an immediate loss of some local services simply because that payment model cannot support some service needs.

“The will of the Legislature, reflecting the desire of the citizens of Texas, should not be ignored or rejected because executive office or agency staff has a different ‘concept’ of how services should be delivered and reimbursed. Concepts are fine, but the practical applicability of such concepts must be considered. New ideas and concepts should be encouraged and are often meritorious, but they should be properly vetted prior to implementation.

“The state’s local MHMR services have been specifically tailored over time to suit the unique needs and characteristics of Texas’ broad and diverse communities. The intimate knowledge, experience, understanding and opinions of local leaders and experts must not be discarded by state bureaucrats. Too much is at stake to risk the erosion, or worse, the collapse of services to one of our state’s most vulnerable populations.

“The governor’s executive order replacing what would have been HB 2572 seems to direct the agency to be cognizant of and respect some of the provisions in HB 2572. I can only hope that the message from the Legislature, as delivered by the overwhelming passage of HB 2572, was received and will be acknowledged by HHSC as it implements the terms of the executive order. Legislators and community leaders will be monitoring its progress and impact.”

Sen. Kyle Janek, the Senate sponsor, said: “HB 2572 is an important piece of legislation that I worked very hard to pass through the Texas Senate. The Heflin amendments to HB 2292 create burdens on local MHMRs that these facilities simply cannot bear. Any changes made to the current funding mechanism need to be carefully thought out and executed only if the infrastructure and technical support needed by these facilities to do so is in place.”

NOTES:

On June 17, Gov. Perry issued Executive Order RP45, which directs HHSC to continue the transition to local health and mental retardation authorities as providers of last resort. It requires HHSC to consider consumer choice, the viability of the safety net, and other factors during the implementation process. HHSC also will request from the attorney general an opinion on the applicability of current law relating to circumstances when a local mental health and mental retardation authority may serve as a provider of services.

HB 2572 was analyzed in Part Two of the May 9 *Daily Floor Report*.

Requiring MUDs to contract with county for elections of MUD directors

HB 2667 by Dutton (Gallegos)

DIGEST: HB 2667 would have required county election officials to administer elections for directors of Municipal Utility Districts (MUDs) in their counties. The requirement would not have applied to an election in a district in which there were 10 or fewer qualified voters at the time the election was called. For districts located in more than one county, the county official in the district with the most inhabitants would have handled the election responsibilities. The district would have been required to pay the county for election services.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 2667 would require Municipal Utility Districts (MUDs) to contract with county election officials to administer elections for directors of the district. Currently, MUDs may conduct their own elections.

“While House Bill No. 2667 is an attempt to bring uniformity to the election process for MUDs, it has not taken into consideration all of the ramifications on the county election process and the impact on taxpaying voters’ access to polling locations. I am a strong believer in providing fair and unfettered access to citizens exercising their right to vote. I also believe that creating uniformity in the election process will be of great benefit to other special taxing districts other than MUDs.

“House Bill No. 2667 fails to take into consideration several unintended consequences, such as the tremendous increase in workload for county officials and the increased cost to the districts and taxpayers. I have instructed my office to work with MUDs, other special taxing districts and county election officials to create a system of uniform elections that will benefit all districts and county election offices.”

RESPONSE: Rep. Harold Dutton, the bill’s author, said: “I take the governor’s commitment to create a system of uniform elections that will benefit special taxing districts, including MUDs. I believe HB 2667 was at minimum, a step in that direction. At most HB 2667 brought to light that uniform and fair elections must apply to special taxing districts, including MUDs.

Sen. Mario Gallegos, the Senate sponsor, was unavailable for comment.

NOTES: HB 2667 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Exempting surplus inventory of drug distributors from property taxation

HB 3016 by Hill (Staples)

DIGEST: HB 3016 would have exempted the value of “drug supplies held in surplus” from the market value of a wholesale pharmaceutical distributor’s inventory for ad valorem taxation purposes. Exempted supplies would have included surplus drugs held for less than 60 days for use in responding to a terrorist attack, bioterrorism event, or catastrophic disaster. Pharmaceutical drug manufacturers, retail pharmacies, and chain pharmacies would not have been included under the exemption.

**GOVERNOR’S
REASON FOR
VETO:**

“House Bill No. 3016 would exclude from taxation excess drug supplies maintained by wholesale drug distributors for less than 60 days. The bill gives the impression that this tax exception should be made because these drugs would be used in the event of a homeland security situation. However, the Department of Homeland Security operates the Strategic National Stockpile, and it is those massive quantities of medicine and medical supplies that states and communities will be able to access in response to a public health emergency.

The bill would also allow wholesale drug distributors to exclude excess drug supplies for responses to general public health care emergency needs without paying taxes on them, but does not provide other entities like drug manufacturers or pharmacies with the same exclusion. This bill unnecessarily uses the guise of national security to establish an unfair tax break. Therefore I am vetoing House Bill No. 3016.”

RESPONSE: Rep. Fred Hill, the bill’s author, said: “It is extremely unfortunate and surprising that the governor vetoed this public safety bill. The purpose of the bill was to allow pharmaceutical drug distributors to be able to maintain a larger inventory of vitally necessary drugs for the benefit of Texans to be used in the event of a natural disaster or terrorist attack. It is not good public policy for large drug distributors to be able to let their inventories drop simply because it is ad valorem tax rendition time. Other industries can move excess inventory in this manner but it is not beneficial for Texas to have drugs be in short supply at any time. The inventory in question should not have to be rendered.

“Our House Local Government Ways & Means Committee and the Senate Finance Committee went through painstaking revisions to assure that the number of entities affected were reduced to the thirteen wholesale drug distributors, that the amount of inventory held for terrorist attacks, man-made or natural disasters, or local trauma needs was small (10 percent), and that local property tax appraisers would have a valid mechanism from which to draw taxable amounts.

“Local public health infrastructure – hospitals, clinics, doctors, EMS – are our first responders. It is their inventory these wholesalers keep and protect. Since hospitals carry a very limited amount of inventory, they naturally look to their distributor first in any emergency. A strategic stockpile is secondary in use to resources on the ground 5 minutes, let alone a day, after a terrorist attack, and is only used in the instances of man-made or natural disasters, or local trauma needs once the pharmaceutical supply chain has been depleted of all its resources. During the September 11 tragedy, it was these distributors that worked with New York and Capitol police and federal agencies to expedite the movement of drugs and supplies into the affected areas. When all airplanes were grounded for several days during the 9/11 tragedy, it made it more difficult for the pharmaceutical distributors to replenish their stocks which are kept low because of the state of Texas method of taxation on inventories.

“The governor’s actions in regards to HB 3016 were apparently motivated by the listeners of a talk radio show in the Houston area that mobilized its listeners to do a letter writing campaign calling for the veto.”

Sen. Todd Staples, the Senate sponsor, said: “Protecting the health and safety of Texans is of the utmost importance. Ensuring Texas has readily available drug supplies is paramount to protecting its citizens from a catastrophic emergency. House Bill 3016 was introduced to provide a mechanism to identify and appraise drug supply which is held in surplus for natural or manmade catastrophes. The bill was an effort to encourage the holding of drug supplies in Texas for those emergency purposes. The chief appraiser has the ultimate discretion in appraising personal property and verifying the accuracy of any rendition.”

NOTES: HB 3016 was analyzed in Part One of the April 18 *Daily Floor Report*.

Restricting prosecutors from encouraging waiver of right to counsel

HB 3152 by Escobar (Ellis)

DIGEST: HB 3152 would have prohibited prosecutors from encouraging or initiating a defendant's waiver of the right to counsel. In addition, prosecutors could not have communicated with an indigent defendant who had requested the appointment of counsel unless the court had denied the request.

A court could not have asked a defendant to communicate with the prosecutor until the court advised the defendant of the right to counsel and how to obtain counsel and the defendant had been given a reasonable opportunity to do so. If an indigent defendant requested counsel, a court could not have encouraged the defendant to speak with the prosecutor unless the defendant's request for appointed counsel had been denied. A defendant's waiver obtained in violation of these rules would have been presumed invalid.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 3152 would establish new requirements for the waiver of counsel in all criminal cases – even those punishable only by a fine, such as a traffic offense. There are a number of instances in which it is beneficial for prosecutors and defendants without attorneys to initiate discussions regarding a guilty plea or referral to trial. This bill would inhibit prosecutors' ability to seek plea bargains on minor offenses, resulting in a backlog of cases and an undue burden on the municipal, justice of the peace and county court systems.

"I have heard from prosecutors who argue that this bill would create tremendous confusion in our courts and could jeopardize hundreds of thousands of convictions. Under this bill, persons who wish to negotiate with prosecutors to resolve their cases would be prohibited from doing so unless a specific waiver is filed, and neither a judge nor a prosecutor could ask a defendant to file the waiver.

"Current law and court decisions provide adequate protections for defendants who wish to waive their right to an attorney."

RESPONSE: Rep. Juan Escobar, the bill's author, said: "I introduced HB 3152 because during my many years as a law enforcement officer I saw too many cases where the prosecutor's only concern was to obtain a conviction.

"Making it easier for prosecutors to process cases cannot be an excuse to deny people their basic rights guaranteed by the Constitution. I am sorry that the governor does not agree that every American is entitled to a legal defense or at least to talk to a lawyer when they are charged with a crime. I would have thought that the miscarriages of justice in the Tulia cases would have made that clear to everyone."

Sen. Rodney Ellis, the Senate sponsor, said: “It is unfortunate that Gov. Perry felt that it was necessary to veto HB 3152, a bill that would have protected Texans’ constitutional right to be represented by counsel.

“HB 3152 would have simply ensured that waivers of the right to counsel occur only after a defendant has been informed of the right to counsel and ensured that such waivers were knowing and voluntary, as required by the Constitution. The bill was unopposed in the Legislature — there were no witnesses in opposition at any stage, passed out of House committee unanimously, out of the House unopposed on voice vote, out of Senate committee unanimously, and on Senate Local and Uncontested.

“The governor provided number of reasons for vetoing and disapproving of HB 3152 to which I would like to respond:

1. “The governor states that HB 3152 would place an ‘undue burden’ and ‘create tremendous confusion’ in our courts. Not true; HB 3152 simply required judges to inform defendants of their right to counsel as required under the Constitution to obtain a valid waiver of that right to counsel before they can encourage a defendant to negotiate an uncounseled plea with prosecutors. This is a simple procedure to which courts should already be in compliance. Hardly an undue burden that creates confusion.
2. “The governor states that HB 3152 would ‘inhibit’ a prosecutor’s ability to initiate plea discussions. In fact, prosecutors are already barred by their own disciplinary rules (Texas Disciplinary Rule of Professional Conduct 3.09) from initiating or encouraging efforts to obtain waivers of the right to counsel.
3. “The governor states that HB 3152 would ‘jeopardize hundreds of thousands of convictions.’ The truth is, HB 3152 merely protected the existing right to counsel by requiring that individuals be informed that they have the right to obtain counsel and that their decision to waive counsel be knowing and voluntary and expressed through a written waiver. It is the current unconstitutional practices of coercing waivers of the right to counsel that jeopardize convictions and inspired HB 3152. Case law provides that convictions obtained after a defendant waived counsel without being informed of this right and without an opportunity to request counsel are unconstitutional and should be overturned. The only reason we have not seen a significant number of reversals as a result of current practices is because these defendants, by definition of the problem, do not have lawyers to assert this valid constitutional argument on their behalf. HB 3152 would have ended these practices, and thus would have improved the certainty and reliability of convictions in the state of Texas.

4. “The governor states that ‘current law ... provide[s] adequate protections for defendants who wish to waive their right to an attorney.’ The sad fact is that this is not the case. HB 3152 was a calibrated response to widespread practices that violate existing constitutional and case law. Putting these rules, which currently are scattered across several volumes of case law, into the statutory law would have been a significant step toward eliminating unconstitutional practices. It would have sent a strong signal to prosecutors and judges who are violating case law and ethical rules, and it would have provided a realistic remedy to the defendants affected by these practices.”

NOTES: HB 3152 was analyzed in Part Three of the May 11 *Daily Floor Report*.

Authorizing governmental entities to create airport districts

SB 433 by Wentworth (Casteel)

DIGEST: SB 433 would have authorized governmental entities, including the state, counties, and municipalities, to form taxing districts to purchase, manage, or finance airports. It would have authorized districts to acquire property through eminent domain and also would have allowed them to issue bonds to support district activities.

**GOVERNOR'S
REASON FOR
VETO:**

“Senate Bill No. 433 would give private citizens broad powers of a public authority with little public accountability. The airport districts allowed in this bill would have the power to condemn public and private property, the ability to sell bonds without the approval of the attorney general, exempt them from municipal zoning laws, and place no requirements for competitive bidding.

“Under current law, cities have sufficient statutory authority to build and operate airports and have no need for special airport districts. Counties interested in operating an airport have the ability to apply to the Texas Department of Transportation for the formation of a Regional Mobility Authority. Knowing the importance of general aviation to our state, I will direct the Texas Transportation Commission to study statewide general aviation issues and develop legislative recommendations for the 80th Legislature.”

RESPONSE: Sen. Jeff Wentworth, the bill’s author, said: “Section 12 of Article 9 of the Texas Constitution, specifically paragraphs (a), (d), (e), and (g), already give the Legislature the authority to create, establish, maintain, and operate airport authorities composed of one or more counties with the very powers the governor seems to object to. Thus far the Legislature has created only the DFW airport. SB 433 would simply have allowed counties to act on their own without waiting for a session of the Legislature to act.”

Rep. Carter Casteel, the House sponsor, said: “I am disappointed that the bill was vetoed. It was intended to permit cities and counties to purchase smaller fields that may be going out of business and use them to provide support for the larger airports in the area. Small planes could have used the auxiliary fields and freed up traffic at the larger airports.”

NOTES: SB 433 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Submission of electronic data on pawn transactions to law enforcement

SB 757 by Armbrister (Solomons)

DIGEST: SB 757 would have required pawnbrokers who generated computerized pawn and purchase tickets to transmit electronically data about the transaction to either a law enforcement agency or a third-party provider. The data transmitted to law enforcement would have had to include the pawnshop name and address, transaction date, item description, and pawn ticket identification number, while the data transmitted to the third-party provider would have had to include all transaction data, including identifying customer information. SB 757 also would have allowed a county sheriff or city police chief to place a hold order on goods held by a pawnbroker if the officer reasonably suspected that the goods had been stolen or otherwise misappropriated. The pawnbroker would have had to retain the goods until the order expired, was released, or was overturned by a court order.

GOVERNOR'S REASON FOR VETO:

“Senate Bill No. 757 is fundamentally the same as House Bill No. 1839 from the Seventy-Eighth Legislative Session which I vetoed. The bill would reduce local control by mandating the use of private third-party providers in gathering information about pawnbroker transactions. The bill also would limit the type and extent of pawn transaction information available to local law enforcement.

“For example, the bill would require pawn transaction information to be submitted electronically if the pawnbroker generates computerized tickets. According to information collected by the Office of Consumer Credit Commissioner, approximately 90 percent of the pawn shops in Texas produce computerized tickets; therefore all of the pawn transaction information would be submitted electronically. Under the bill, local law enforcement would receive restricted transaction information, while a third-party provider would receive all transaction information. In order to continue receiving all transaction data, as they now do, law enforcement would have to purchase the information from a third-party provider.

“With this veto message, I hope to discourage legislators from further attempts to reduce law enforcement’s access to pawn transaction information.”

RESPONSE: Sen. Ken Armbrister, the bill’s author, said: “When a bill passes two sessions in a row on local calendars, yet it is vetoed twice, it bears looking into. There was no opposition expressed in committee and we had made changes to address any concerns about the previous legislation. We were very surprised by the veto.”

Rep. Burt Solomons, the bill’s sponsor, said: “I am disappointed, and somewhat surprised, that Gov. Perry has once again chosen to veto a bill that is designed to help law enforcement investigate property crimes while at the same time protecting the privacy

rights of customers. During the session, I had very positive discussions with his office concerning the subject matter of this bill. However, it seems that the governor is more concerned with doing favors for a few police chiefs than helping police officers solve property crimes while still protecting privacy rights.

“Currently, pawnshops are required by law to allow peace officers to manually review the paper copies of all pawnshop transactions. This is a very expensive and time consuming exercise for the officers and department personnel. While the governor is correct about the percentage of pawnshops who produce computerized pawn tickets, pawnshops are not required by law to submit the transaction data electronically. If a police department is receiving pawnshop data electronically it is the result of an agreement between the parties. Pawnshops want to assist law enforcement in solving property crimes. However, they are uncomfortable in giving private information of their customers who are not under investigation in a format that is easy to nefariously manipulate. As discussed in committee hearings, only 1 percent of property received by pawnshops is stolen. Thus, 99 percent of the property received by pawnshops is from law abiding citizens. SB 757 represented a fair and balanced approach to helping police departments investigate property crimes in our electronic age while protecting the privacy rights of the many innocent pawnshop customers in this state.

“In his veto proclamation, the governor stated that SB 757 is ‘fundamentally the same as House Bill No. 1839 from the Seventy-Eighth Legislative Session which I vetoed.’ That is not correct. SB 757 contained four new provisions that were requested by the police chiefs’ association including: (1) ticket identification numbers on reportable data; (2) verbal hold orders extended to 10 days from seven days; (3) allowing offenders to be prosecuted under other appropriate penal statutes, if applicable; and (4) protecting current seizure law with respect to misappropriated contraband. Again, Sen. Armbrister and I made every attempt to address the police chiefs’ concerns regarding this bill except for one issue.

“That issue, which remains the same in both bills and is the basis of the police chiefs’ opposition, prevents police officers from racially profiling pawnshop customers. The police chiefs made numerous requests to remove this provision. Sen. Armbrister, a former police officer, and I, a former city attorney and municipal court judge, both agree that law enforcement officials should not be able to profile suspected offenders, or anyone else for that matter, based on their race, age, or location of residence. SB 757 clearly reflects this position. However, it seems clear by the veto of this bill that the police chiefs were able to convince the governor that there is an inherent value in being able to racially profile pawnshop customers in the name of investigating property crimes.

“Further, the governor stated that SB 757 ‘would reduce local control by mandating the use of private third-party providers in gathering information about pawnbroker transactions.’ The plain language of the bill provides otherwise. Pawnbrokers transmit data electronically to a third-party provider only if the police department chooses this option (see Section 371.352).

“The bill provides four means of providing data to a police department in an electronic format. First, the pawnbroker can use a third-party provider, if the police department chooses this option. Second, the pawnbroker can transfer a subset of the data to the police department directly, if the police department chooses this option. Third, the pawnbroker may agree to transfer the complete data to the police department. Finally, the pawnbroker and police department may agree on any other means of sharing information. This is hardly a reduction in local control.

“Moreover, it is extremely disingenuous for the police chiefs to complain to the Legislature about being mandated to use a private third party when four of the six major cities in the state currently use a private third-party database. In fact, nearly 170 police departments and 4,000 pawnshops are registered with the same third-party database. On the database company’s website, there are testimonials by police officers, from the same cities that opposed SB 757, lauding the ease and effectiveness of the private third-party service. All of this information was communicated to the governor’s office but apparently to no avail.

“The governor states that the bill ‘limit[s] the type and extent of pawn transaction information available to local law enforcement.’ Again, the plain language of the bill suggests otherwise. In order to balance the privacy rights of innocent customers with the need to improve law enforcement’s ability to investigate property crimes, the bill limits the information available to a police officer unless the officer suspects an item to be stolen (see Section 371.355). It is not unreasonable to ask that a police officer have suspicion that an item is stolen before providing that officer with the private information about an individual.

“SB 757 would have made the jobs of law enforcement significantly easier by providing police officers with access to electronic data, instead of the paper copies used today. More importantly, it would have established a uniform method of transferring electric pawnshop data with necessary consumer protections. However, it apparently did not provide access to enough data to allow law enforcement officials to racially profile pawnshop customers suspected of misappropriating property. Thus, the police chiefs’ association has decided that the current, inefficient paper process is better than the fair and balanced approach SB 757 takes.

“In short, because the police chiefs association decided it must have fully searchable access to the private customer information of the more than 99 percent of pawn transactions that do not involve stolen goods, the governor has once again vetoed the best and most balanced bill the Legislature could pass to assist law enforcement officials’ investigations of property crimes in this era of electronic access to data.”

NOTES:

SB 757 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Requiring affordable housing in Travis County rail transportation project reinvestment zone

SB 833 by Barrientos (Dukes)

DIGEST: SB 833 would have required the project plan for a reinvestment zone using tax increment financing to include certain levels of affordable housing. It would have applied to a rail transportation project in Travis County.

**GOVERNOR'S
REASON FOR
VETO:**

“Senate Bill No. 833 would require that Travis County, should it create a reinvestment zone as part of developing a new commuter rail project, devote a portion of the tax increment finances created within the zone for building affordable housing. I respect the intent of this legislation. My administration strongly supports affordable housing and efforts to expand housing opportunities for working Texans.

“However, local governments use tax increment financing to promote economic growth and redevelopment in designated areas. The success of these zones depends on local government officials and citizens setting priorities for the zone, as well as strong local management to see that the zone’s intended purposes are met. These zones are intended to finance and implement complex economic development strategies to benefit an entire community, and certainly few projects will be as complex as those associated with a new commuter rail project in Travis County. For this reason, I oppose setting in state law the priorities of a reinvestment zone in Travis County.

“Moreover, as the Texas economy continues to grow, our communities are meeting the challenges of expanding their transportation infrastructure. That is why I am opposed to diverting limited funding for critical transportation projects to any other purpose. While the reinvestment zone envisioned in Senate Bill No. 833 would not directly fund rail construction in Travis County, the zone is an integral part of making the rail line successful and promoting the economic vitality of the adjacent area. I am confident that officials and concerned citizens in Travis County will make wise decisions as to how best to use tax increment financing associated with any new commuter rail project, and meet the needs of all of the county’s residents.”

RESPONSE: Sen. Gonzalo Barrientos, the bill’s author, said: “This was a local bill that set achievable thresholds for affordable housing and would have ensured that the people who could benefit most from mass transportation could live close enough to use it.”

Rep. Dawnna Dukes, the House sponsor, said: “The veto of SB 833 by Barrientos was strictly evidence of the pattern of practice this session of eliminating affordable housing. It is essential, especially in Austin with one of the highest housing markets in the state, to preserve affordable housing. Rail districts tend to be economic hubs and property values tend to substantially increase around those hubs. By utilizing funds from the TIF [tax increment financing reinvestment zone] served by a rail transportation project to build a

certain percentage of affordable housing, the preservation of traditional neighborhoods around these transit stops is a real possibility. With the veto of SB 833 and the assurance of affordable housing within a TIF, we create exclusionary regions for Texans.”

NOTES:

SB 833 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Requiring written, oral permission for police to conduct consent searches

SB 1195 by Hinojosa (Dutton)

DIGEST: SB 1195 would have prohibited peace officers who stopped motor vehicles for alleged traffic law violations from searching the vehicle unless the officer:

- had probable cause or another legal basis for the search;
- conducted a search for weapons based on an articulation of a reasonable fear for the officers safety or the safety of others;
- obtained the written consent of the vehicle's operator on a form that complied with provisions of the bill; or
- obtained the oral consent of the vehicle's operator and ensured that the oral consent was recorded in compliance with the bill.

DPS would have had to establish requirements for the written consent form and for the audio and video recordings, for which SB 1195 would have established minimum requirements. The written form and the recording would have had to include a statement that the driver understood that the driver could refuse to give consent and a statement that the driver voluntarily gave consent to search the vehicle.

GOVERNOR'S REASON FOR VETO:

“Senate Bill No. 1195 would require law enforcement officers, in certain traffic stop situations, to get a signed or video or audio taped consent before searching a vehicle.

“A limited number of jurisdictions in Texas already require their officers to get a signed or recorded consent before searching a vehicle, and there is nothing in current law that prohibits other entities from adopting policies that require their officers to receive written consent prior to conducting searches.

“I believe we already have sufficient protections in our Constitution and case law that protect Texans against unreasonable searches. Furthermore, there is insufficient information available at this time to determine whether signed or taped consent requirements place too onerous a burden on law enforcement or provide additional protections to the public. I would expect members of the legislature to review this issue during the interim and to bring back their findings to the 80th legislative session.”

RESPONSE: Sen. Juan Hinojosa, the bill’s author, said: “It is unfortunate that a small number of law enforcement officers, and their leadership in Austin, misrepresented the facts of a bill that would have been good public policy, enhanced law enforcement, and protected the safety of the public. This problem will not go away as long as that small group of law enforcement continues to abuse the power delegated to them by the citizens of Texas.”

Rep. Harold Dutton, the House sponsor, said, “SB 1195 was an attempt to eliminate the uncertainty about whether a police officer has expressed consent to search a vehicle. Eliminating this uncertainty was beneficial to law enforcement and SB 1195 accomplished that purpose.”

NOTES: SB 1195 was analyzed in Part One of the May 24 *Daily Floor Report*.

Procedures for issuing tax refunds to property owners

SB 1203 by Madla (Homer)

DIGEST: SB 1203 would have allowed a property owner to direct a taxing unit or appraisal district to deliver tax refunds on the property to a person designated to receive other information about the property. The person designated to receive the refund would have had 30 days in which to notify the property owner that the refund had been delivered.

**GOVERNOR'S
REASON FOR
VETO:**

“Senate Bill No. 1203 would authorize property owners to designate an agent to receive tax refunds on their behalf, but would fail to protect property owners from unreasonable charges, which often amount to as much as 50 percent of the refund owed the taxpayer.

“This bill furthermore would direct appraisal districts and taxing entities to send tax refunds to third-party agents rather than directly to the taxpayers. As such, this bill is tantamount to establishing a fee-collection system for third-party agents. While these collection firms claim to provide a public service, it should be incumbent upon appraisal districts and taxing entities to provide sufficient information to property owners on how to obtain a refund at no cost, and to make it easier for property owners to obtain those refunds.”

RESPONSE: Sen. Frank Madla, the bill’s author, had no comment on the veto.

Rep. Mark Homer, the House sponsor, said: “While I understand the governor’s reasoning for the veto, I do believe that the bill took a promising step to not only ensure a streamlined tax refund system throughout appraisal districts and county tax offices, but also to guarantee the homeowner/taxpayer will obtain all money owed to them from those offices.”

NOTES: SB 1203 was analyzed in the May 19 *Daily Floor Report*.

Requiring certain counties to call local-option elections on the sale of alcohol

SB 1246 by Brimer (Woolley)

DIGEST: SB 1246 would have required elections on legalizing mixed beverage sales in certain counties. An election would have been required in a county with a population of more than 1.4 million or an adjacent county with a population of at least 300,000 if the sale of mixed beverages was not legal in part or all of the county. The bill also would have applied to Beaumont and Port Arthur. An election on “the legal sale of mixed beverages in restaurants by food and beverage certificate holders only” would have been required during the first uniform election after September 1, 2005. An election would not have authorized a sexually oriented business to obtain a license or permit to sell mixed beverages or any alcoholic beverage of any type.

**GOVERNOR'S
REASON FOR
VETO:**

“Senate Bill No. 1246 would require certain counties and cities that do not currently allow mixed drink sales in restaurants to hold elections to legalize such sales. This is a major departure from the state’s long-time policy of allowing local residents to decide for themselves if they want a liquor election by filing a petition calling for one, rather than having the legislature dictate that an election be held.

“Under our traditional system, residents have the option of petitioning for an election if they want one or to refrain from petitioning if they are satisfied with their local wet or dry status. This bill requires every city or county which meets certain population criteria and which currently does not allow restaurants to sell mixed beverages to hold an election for the legalization of mixed drink sales in restaurants without a petition. This would deprive residents of areas affected by the bill of one of the two protections enjoyed by all other counties to ensure that their wishes for their neighborhood are respected.

“This bill would also affect counties which are not currently large enough to be covered by the bill, but which pass the bill’s population limits in the future, since it requires an election as soon as the city or county passes the population threshold.

“Our current system allows local residents to decide if they want a liquor election. The dual process of petition and election is the best way to ensure that Texans can continue to be in charge of the destiny of their neighborhoods. We should not take this important tool of local control away from them.”

RESPONSE: Sen. Kim Brimer, the bill’s author, said: “Under current law, local option elections under the Alcoholic Beverage Code are placed on the ballot by means of petition. The minimum petition requires a number of signatures equal to 35 percent of the voters who voted in the most recent gubernatorial election, gathered within 60 days.

“Due to the petition requirements, it is virtually impossible to call an election in a populous area. Dallas County, for example, would require the collection of 155,989 signatures in 60 days.

“SB 1246 would have provided the voters in a metropolitan area with the opportunity to vote on allowing mixed beverage sales in restaurants. This legislation would have had no impact on the sale of alcohol in bars, liquor stores or by other retailers.

“Finally, the issue would have to be voted on during the next election held by the county, so local governments would incur no additional cost. I am disappointed that voters in these metropolitan areas will be denied an opportunity to vote on this issue.”

Rep. Beverly Woolley, the House sponsor, had no comment.

NOTES: SB 1246 was analyzed in the May 20 *Daily Floor Report*.

Providing employee benefits to certain non-municipal firefighters

SB 1433 by Madla (Rodriguez)

DIGEST: SB 1433 would have expanded a civil service system to firefighters employed by emergency service districts with populations of 30,000 or more and departments created by interlocal agreements between two or more political subdivisions. These firefighters would have been entitled to the same benefits as municipal firefighters under a municipal civil service system, including provisions governing payroll deductions, longevity and classification pay, comprehensive benefits, and working conditions.

**GOVERNOR'S
REASON FOR
VETO:**

“Senate Bill No. 1433 would mandate emergency service districts serving populations of 30,000 or more to provide the same civil service system to their firefighters that cities provide municipal firefighters. Civil service system benefits – including longevity and classification pay – would increase the cost to these districts, and voters would have no ability to vote on the civil service system provided by this bill. Because emergency service districts are more limited in their ability to raise revenue than cities, the districts would face difficulty meeting the increased costs associated with a civil service system.

“Furthermore, the bill would require districts that drop below the 30,000 population threshold to continue the civil service system, even though they would have a lower tax base to fund the system. The appeal and grievance procedures required by the bill may result in legal and administrative costs beyond the district’s capability to manage, thus negatively impacting their operation, and that is a concern expressed by emergency service districts about this bill.

“It is my intent to work with Emergency Service Districts so that in the 80th legislative session we can provide employment protections for our firefighters while also resolving how to address entities whose populations may drop below the 30,000 threshold.”

RESPONSE: Sen. Frank Madla, the bill’s author, had no comment on the veto.

Rep. Eddie Rodriguez, the House sponsor, said: “I respectfully disagree with Gov. Perry’s veto of SB 1433. SB 1433 was a step forward to bring firefighters employed by emergency service districts (ESDs) with benefits similar to those enjoyed by municipal firefighters. SB 1433 excluded smaller ESDs which may not provide the benefits, and volunteer ESDs – including those operating under a contract.

“The intent of SB 1433 was to simply bring comparable benefits to ESD firefighters who do the same job as municipal firefighters.

“Furthermore, the governor states the following in the veto proclamation:

The appeal and grievance procedures required by the bill may result in legal and administrative costs beyond the district’s capability to manage, thus negatively impacting their operation, and that is a concern expressed by emergency service districts about this bill.

“SB 1433 provides for an appeal to a hearing examiner, which is comparable to an arbitrator, thus the costs will not be as great as the expense of employees appealing to State District Court. Arbitration is a fraction of the cost of court, and the appealing firefighter pays 100 percent of the arbitrator’s fees. Although there may be more appeals, the district’s attorney fees would be reduced, and unlike district court, an arbitrator cannot award attorney fees against the district if the firefighter wins the decision.

“While I am disappointed in the veto of SB 1433, I applaud the governor for his goal to provide employment protections for our ESD firefighters in the next legislative session. I am committed to working with him to accomplish that during the 80th legislative session.”

NOTES: SB 1433 was analyzed in Part Two of the May 23 *Daily Floor Report*.

Using sales tax revenue to pay or secure certain municipal public securities

SB 1440 by Hinojosa (Luna)

DIGEST: SB 1440 would have allowed cities to use sales and use tax revenue to pay or secure the payment of public securities under certain circumstances. The securities would have been required to be issued by or on behalf of the city to finance the acquisition, construction, equipping, renovation, or improvement of public works or other projects located in one of the following areas: tax increment reinvestment zones; enterprise zones; municipal management districts; public improvement districts; empowerment zones or enterprise communities; or renewal communities.

**GOVERNOR'S
REASON FOR
VETO:**

“Senate Bill No. 1440 would allow a municipality to use sales tax dollars to pay for bonds and other financing mechanisms related to tax increment reinvestment zones, designated enterprise or empowerment zones, and other economic development entities. No local vote would be required to approve this change. I am vetoing Senate Bill No. 1440 because these alternative economic development financing options are designed to be self-supporting, where the development pays for itself through increased property tax revenue from property improvements. Sales tax dollars should not be used to subsidize this development without the consent of the citizens.”

RESPONSE:

Sen. Juan Hinojosa, the bill’s author, said: “I agree and I will correct the oversight of allowing the local voters to approve the use of local sales tax monies to be used to payoff municipal public security bonds.”

Rep. Vilma Luna, the House sponsor, said: “SB 1440 would give new tools to municipalities to promote economic development. I believe SB 1440 would have benefited not only my constituents, but the entire state of Texas, by allowing cities and counties to use the sales taxes they already collect to create incentives for job growth.

“I am disappointed that the governor did not agree with the consensus of the Legislature on this issue. I was not aware of any opposition to this bill. Throughout the legislative process, no potential negative consequences were brought to my attention. It is important to make economic development a priority for Texas and especially for our local communities. Cities should be allowed the benefits available through legislation like SB 1440.”

NOTES:

SB 1440 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in an HRO *Daily Floor Report*.

Allowing the Greater East End Management District to impose assessments on certain residential property

SB 1555 by Gallegos (Dutton)

DIGEST: SB 1555 would have allowed the Greater East End Management District to impose taxes, impact fees, and assessments on multi-unit residential property consisting of more than 13 units.

**GOVERNOR'S
REASON FOR
VETO:**

“Senate Bill No. 1555 would allow the Greater East End Management District in Houston to impose assessments on multi-unit residential property consisting of more than 13 units. Currently, the district is prohibited from imposing assessments or taxes on any residential property. The general law governing management districts prohibits districts from imposing impact fees, assessments or taxes on single-family detached residential property, duplexes, triplexes or quadraplexes. The language in this bill would allow for the first time for the management district to assess property taxes on single family homes. Imposing property taxes and assessments on single-family residential property is contrary to the general law governing municipal management districts.”

RESPONSE: Sen. Mario Gallegos, the bill’s author, said: “I am disappointed that the governor decided to veto SB 1555, which would have provided critical dollars to an area of my senatorial district that sorely needs it. The governor’s contention that SB 1555 would have allowed for the assessment of single-family residences runs contrary to the intent of this bill, and I look forward to working with the governor to address these concerns during the special session or subsequent regular session.”

Rep. Melissa Noriega, the House sponsor, was unavailable for comment.

NOTES: SB 1555 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Creating the Flatrock Springs Municipal Management District

SB 1821 by Fraser

DIGEST: SB 1821 would have created the Flatrock Springs Municipal Management District in an effort to promote and develop economic growth in Burnet County.

**GOVERNOR'S
REASON FOR
VETO:**

SB 1821 was vetoed at the request of the author.

RESPONSE:

Neither Sen. Troy Fraser, author of SB 1821, nor Rep. Suzanna Hupp, the House sponsor, had a comment on the veto.

NOTES:

SB 1821 passed the House on the Local, Consent, and Resolutions calendar and was not analyzed in the *Daily Floor Report*.

Creating the NASA Area Management District

SB 1867 by Jackson (J. Davis)

DIGEST: SB 1867 would have created the NASA Area Management District as a political subdivision of the state to administer and provide funding for community improvement projects and services to benefit public and private interests in the district. This would have included developing transportation and commerce and promoting the health, safety, and general welfare of residents, employees, employers, visitors, and consumers in the district. The district would have been located in a specified area within the city of Nassau Bay in Harris County and would have been governed by a board of seven directors appointed by the mayor and governing body of the city. The district could have levied assessments and issued bonds to pay for authorized improvements and services of the district. A petition signed by the owners of a majority of the assessed value in the district, as well as a hearing, would have been required prior to financing projects. The district could have imposed a sales tax without calling an election. Approval by Nassau Bay's governing body would have been required for the issuance of bonds, imposition of a sales tax, or imposition of an assessment on residential property. The district would not have had the power of eminent domain.

**GOVERNOR'S
REASON FOR
VETO:**

“Senate Bill No. 1867 would create the NASA Area Management District. A confirmation election would not be required to create the district. The district would have the power to levy assessments, issue bonds, and impose ad valorem, maintenance, and sales taxes without voter approval. The district would also have the power to impose an assessment on single-family residential property. This bill would also allow an appointed board to impose property taxes and assessments on single-family residential property without voter approval, which is contrary to the general law governing municipal management districts.

Because the management district would encompass the exact same territory as the city, it effectively would represent double taxation for city residents without even the ability to vote on it. Finally, this bill represents a major departure from standard management districts.”

RESPONSE: Sen. Mike Jackson, the bill's author, and Rep. John Davis, the House sponsor, said: “The governor's veto of SB 1867 was the result of misinformation. The NASA Area Management District (district) by Sen. Mike Jackson and sponsored by Rep. John Davis was initiated by the City of Nassau Bay. The property to be included in the district is entirely commercial. There are no single family residential units in the district and only a few multi-family apartment units. The governor mistakenly believed that the district covered the entire city.

“The city intended to use the creation of this district to promote the redevelopment of its commercial areas, specifically the waterfront property and area around NASA. The district was proposed to be a Municipal Management District, similar to others in the greater Houston area, including Downtown, Uptown, Greenspoint, and Westchase. The district will be very similar to the Baybrook Management District created last session by legislation sponsored by Sen. Jackson and Rep. John Davis.

“The City of Nassau Bay was in the process of inviting developers to propose plans for redevelopment and believed that this district would be a necessary tool to facilitate this redevelopment. Developers would have possibly proposed high-rise or mid-rise mixed use buildings on the waterfront: retail, restaurant and entertainment on the ground floors, with lofts and condominiums on the upper floors.

“To further clarify some of the other misconceptions of this legislation, the management district did not have the authority to levy ad valorem property taxes. Most management districts do have this authority. The NASA area district could have levied an assessment on property, but only after: the assessment is requested by the petitions of the majority of the owners of property in the district; notice is published and mailed to every property owner in the district; and a public hearing has been held.

“Since there are no homes now in the district and the property in the district is zoned commercial, it was unlikely that there would ever be single family residential property to be assessed. Before the district could levy an assessment on residential property, the City Council of the City of Nassau Bay first must pass an ordinance or resolution at a public meeting authorizing the assessment. Council members are the elected representatives of the citizens of Nassau Bay and are responsible to their constituencies for their votes. If the voters are still displeased with action taken by the city council the residential property owners would have a voice in approving or disapproving the assessment through the petition process.

“The district would have had the ability to levy a quarter-cent sales tax, but only if the city council of the City of Nassau Bay passed an ordinance or resolution at a public meeting authorizing the sales tax. The city could also require the district to stop levying the sales tax at any time.

“The veto of this bill is a misfortune for the Nassau Bay community. The local officials and businessmen are upset with the governor’s decision and are awaiting a direct response for the reason behind his veto. The city is working with Congressman Tom DeLay, Sen. Jackson and state Rep. Davis to see how this mistake can be corrected in the future.

“The bill that passed was identical to the bill that was introduced; no amendments were made to SB 1867 by the House or Senate. Before June 17, 2005, the governor’s office had not contacted either legislator or staff or the city to discuss the concerns of this management district. Throughout the legislative process there was no opposition expressed regarding this bill. In fact, SB 1867 was one of three management districts vetoed by the governor in the final hour while he signed off on at least 10 other similar districts.”

NOTES: SB 1867 passed the House on the Local, Consent and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

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