
Vetoed Legislation

80th Legislature

Gov. Rick Perry vetoed 51 bills approved by the 80th Legislature during the 2007 legislative session. The vetoed legislation included 43 House bills and eight Senate bills. Also, three House concurrent resolutions failed to take effect when the governor refused to sign them.

This report includes a digest of each vetoed measure, 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 HB 1 by Chisum, the general appropriations act, and HB 15 by Chisum, the supplemental appropriations act, will appear in the upcoming House Research Organization State Finance Report Number 80-3, *The General Appropriations Act for Fiscal 2008-09*.

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Allowing Texas Department of Criminal Justice to restore good conduct time

HB 44 by Hodge (Uresti)

DIGEST: HB 44 would have authorized the Texas Department of Criminal Justice (TDCJ) to restore to certain inmates' good conduct time forfeited due to an offense or a violation of agency rules. Inmates serving time for certain violent and serious offenses would not have been eligible.

**GOVERNOR'S
REASON FOR
VETO:**

"House Bill No. 44 would allow the Texas Department of Criminal Justice to restore forfeited good conduct time to an inmate while imprisoned. Current statute gives the department the discretion to forfeit all or part of an inmate's good conduct time credits if an inmate commits an offense or violates a department rule. That is sufficient discretion.

"Providing an additional discretionary opportunity does nothing to protect public safety. Indeed, this bill could endanger public safety by triggering early release of convicted felons who act out in prison."

RESPONSE:

Rep. Terri Hodge, the bill's author, said that she was extremely disappointed that Gov. Perry as governor of the state with the second largest prison population in the country chose to veto HB 44. "It is clear to me," she said, "that his lack of understanding on how the Texas prison system operates is diminished only by his shortsightedness on criminal justice policy.

"According to the governor's veto statement, it is clear he is not familiar with the policies that govern the Texas Department of Criminal Justice (TDCJ). HB 44 is permissive legislation that would have restored the only offender incentive tool used by wardens to better manage inmate behavior prior to 1995.

"Good time is not given; it is earned by offenders for good behavior, program participation, and work and education credits. Good time is used by staff to determine an offenders' time earning level, trustee status, job and housing assignments, initial parole eligibility date, and mandatory parole release for non-violent offenders.

"HB 44 would allow wardens the discretion to restore good conduct time to non-violent offenders who lost time due to a non-violent agency rule violation. The implementation of HB 44 would not have posed a danger to the public.

"It is very unfortunate Gov. Perry did not consider the safety of prison employees as well. Currently, there are approximately 150,000 violent and non-violent offenders in Texas prisons and a shortage of approximately 3,400 correctional officers. Restoration of an offender's good time during the annual 12-month review would create a safer work environment for prison staff, provide an incentive to improve and maintain good behavior, and would reduce the filing of offender's grievances, freeing clerical staff to assume other important duties, thus saving the Texas taxpayers millions of needed dollars for public education.

“The governor must allow our wardens to do the job we have hired them to do. HB 44 was a good step at reversing some of the draconian measures implemented in years past. We can no longer afford a simple ‘tough on crime’ mentality. We have to start being smart on crime. My colleagues in the Legislature overwhelmingly agreed with me. It’s unfortunate that the governor did not.”

Sen. Carlos Uresti, the Senate sponsor, said, “I am disappointed with Gov. Perry’s veto of House Bill 44 because the measure would have helped the state deal with overcrowding in its correctional facilities. Additionally, by giving TDCJ additional discretion to restore good time conduct credit, you equip the department with another tool they can use to instill order in our correctional facilities, and order is what ensures the safety of our guards.

“This bill passed the Texas Senate by a vote of 30 to 1 due to an act of compromise. Sen. Florence Shapiro’s amendment, which was adopted by unanimous consent, prohibited the restoration of good time conduct credit to those inmates serving sentences for offenses listed in Section 508.149(a) of the Government Code. Gov. Perry’s reasoning is faulty; the measure would not be applicable to the class of inmates that could ‘endanger public safety’ and it would not trigger the early release of felons. The early release of any felon can only be granted by the Board of Pardons and Paroles.”

NOTES: HB 44 was analyzed in Part One of the April 11 Daily Floor Report.

In-cell educational services for certain inmates in administrative segregation

HB 47 by Hodge (Hinojosa)

DIGEST: HB 47 would have allowed the Texas Department of Criminal Justice to establish a policy to provide in-cell education for inmates confined in administrative segregation if the inmate would benefit from the education and it could be provided in a way that would not pose a threat to the health or safety of any department staff member or other inmates.

**GOVERNOR'S
REASON FOR
VETO:**

“By permitting the Texas Department of Criminal Justice (TDCJ) to establish a policy to provide in-cell education to certain offenders confined in administrative segregation, House Bill No. 47 would run counter to the purpose of administrative segregation, divert important education resources from other offenders, and highlight concerns the legislature has with educating offenders in administrative segregation.

“Administrative segregation is generally used to punish offenders who are serious behavior problems. Offenders in administrative segregation lose a number of privileges, including participation in educational or vocational classes. I think it is important to remember why offenders are in administrative segregation and to be judicious in how privileges are returned to those offenders.

“In addition, TDCJ estimates that implementation would require additional positions and supplies at a total annual cost of \$2,736,782. I believe these funds are better spent on rehabilitating other, non-violent offenders.

“Finally, it is worth comparing the provisions of the bill with the TDCJ budget rider that prohibits in-cell tutoring for offenders in administrative segregation. While I appreciate the distinction between these programs, it indicates to me that the legislature also has reservations about certain types of in-cell education for offenders in administrative segregation.

“I hope the Board of Criminal Justice and the legislature will consider this matter further because there are some in administrative segregation, like those offenders who are there for their own protection, who should have access to education. Yet, providing education to offenders in administrative segregation must always be balanced against the reason we have administrative segregation.”

RESPONSE: Rep. Terri Hodge, the bill’s author, said: “I am appalled that Gov. Perry chose to veto HB 47 and I think that the people of Texas should be as well. The purpose of HB 47 was to establish an in-cell education program for offenders housed in administrative segregation as a part of the Re-entry and Rehabilitation Program.

“Current law prohibits TDCJ from providing educational classes or materials to offenders housed in administrative segregation regardless of their age, length of sentence, or IQ level. Administrative segregation offenders are also currently excluded from participating in GED classes. In our current prison environment, offenders in

administrative segregation are treated much the same as offenders on death row. They are confined to their 6x10 foot cells, 23 hours a day, and seven days a week. They are allowed one hour per day for recreation and may only leave their cells for showers, medical needs and classification and disciplinary hearings. The one distinct difference, however, is that offenders in administrative segregation will one day be released back into our communities and neighborhoods. In fact, in fiscal year 2006, 1,539 offenders were released directly from administrative segregation back into society.

“Gov. Perry said that, ‘House Bill No. 47 would run counter to the purpose of administrative segregation, divert important education resources from other offenders, and highlight concerns the legislature has with educating offenders in administrative segregation.’ I find this statement shocking for several reasons.

“First, there is no defined purpose for administrative segregation. So for Gov. Perry to say there is one, is false. As of Monday, April 30, 2007, there were 9,338 offenders housed in administrative segregation. Within the next five years 3,175 of those offenders will be released back into society, and within the next 10 years an additional 1,295 offenders will be released. Many of these offenders have no formal education. HB 47 would have attempted to remedy this. Countless studies have shown that the key to stopping recidivism is education. Gov. Perry obviously thinks otherwise.

“Secondly, the governor says in his veto statement that, ‘I believe these funds are better spent on rehabilitating other, non-violent offenders.’ Apparently, the governor is unaware there are many non-violent offenders housed in administrative segregation. It is unfortunate that TDCJ would manufacture a false annual cost of \$2,736,782 for program implementation, supplies, and staffing positions and provide such information to the governor.

“Finally, I was aware of the budget rider which prohibits in-cell tutoring for offenders in administrative segregation. Therefore, I filed HB 47. HB 47 would have allowed offenders in administrative segregation to participate in in-cell literacy programs through self-paced home study educational courses purchased by the offenders, not TDCJ.

“In his closing statement, the governor says, ‘I hope the Board of Criminal Justice and the legislature will consider this matter further because there are some in administrative segregation, like those offenders who are there for their own protection, who should have access to education. Yet, providing education to offenders in administrative segregation must always be balanced against the reason we have administrative segregation.’

“That statement is a slap in the face of every member of the 80th Texas Legislature. I think the governor has forgotten his time he spent in this body and the painstaking process that every bill must go through before it reaches his desk. HB 47 was vetted at every step of the legislative process and was sent to his desk having only two of

181 members voting against it. This Legislature gave full thought and overwhelming approval to this piece of legislation. It's a shame the governor believes we must wait another two years to come to the same conclusion.”

Sen. Juan Hinojosa, the Senate sponsor, had no comment on the veto.

NOTES:

HB 47 was analyzed in Part Two of the May 3 *Daily Floor Report*.

Revised allocations to the Skills Development Fund and the Texas Enterprise Fund

HB 48 by Chávez (Zaffirini)

DIGEST: HB 48 would have altered the allocation formula from the employment and training investment assessment holding fund, a revenue source funded by an assessment on employers as a part of the unemployment insurance system, which supports the Texas Enterprise Fund and the skills development program.

The bill would have retained the current distribution proportions of 67 percent of the money in the employment and training investment assessment holding fund allocated to the Texas Enterprise Fund and the remaining 33 percent allocated to the skills development program. It would have repealed a provision in existing law that, effective September 1, 2007, will decrease the allocation to the skills development program to 25 percent and increase the allocation to the Texas Enterprise Fund to 75 percent.

GOVERNOR'S REASON FOR VETO:

“House Bill No. 48 would change the distribution of funds from the Employment and Training Investment Assessment Holding Fund and would reduce funding for the Texas Enterprise Fund (TEF) by \$12.8 million for the biennium.

“TEF has proven to be one of the state’s most successful tools in job expansion and economic development by bringing more than 45,000 jobs and \$15 billion in capital investment to Texas. House Bill No. 48 would needlessly reduce funding for this valuable program.”

RESPONSE:

Rep. Norma Chávez, the bill’s author, said: “The Skills Development Fund (SDF) has provided worker training evenly across the state in areas that have yet to benefit significantly from the Texas Enterprise Fund (TEF). Border and rural Texas will not be eligible for TEF if the workforce is not prepared or adequately trained to meet the demands of new industry coming to Texas. HB 48 was supported unanimously in both chambers. This bill would have increased funding for SDF, a highly successful workforce training program that has helped approximately 2,834 employers create 61,134 jobs and has trained an additional 106,976 incumbent workers. HB 48 would have increased funding for SDF by \$12.8 million over the next two years, bringing the total to \$60 million in SDF funds for job-training and job-creation over the biennium.

“Last session, HB 2421, a bill that I authored, created the funding mechanism for SDF and TEF. The bill created an employment investment and training investment assessment by allocating 0.1 percent from the Unemployment Insurance Fund (UI) to these programs. The introduced bill allocated all collected funds to SDF. However, I worked with the Governor’s Office to direct a portion of the fund to the TEF after his legislation, using the same funding mechanism, failed to move in both chambers. In the final version of the bill, 67 percent was allocated to TEF and 33 percent to SDF. However, effective September 1, 2007, that split will change to 75 percent for TEF and 25 percent to SDF. HB 48 would have maintained the funding split at the current level of 67 percent to 33 percent.

“During the floor debate of HB 1 this past session, 16 amendments that would have reallocated money from TEF to other programs were struck down by a parliamentary ruling. According to the ruling, the holding fund created in HB 2421 was a special trust fund in the custody of the comptroller outside of the state treasury, therefore, all 16 amendments were ruled out of order.

“If not for HB 2421 and my cooperation with the Governor’s Office, TEF would not exist today.

“I continued to work with the Governor’s Office this past session. As a member of the Appropriations Committee, I was asked by the Governor’s Office to submit an appropriation rider to provide TEF with an additional \$62 million from General Revenue. HB 1 as introduced provided TEF with \$120 million from the UI fund.

“Although the rider I submitted was not included in the final version of the budget, TEF was ultimately appropriated over \$224 million for the biennium. SDF, however, was appropriated only \$50 million. If anything, TEF is appropriated more money than needed. In fact, of the \$224 million appropriated, \$84 million was carryover from the previous biennium.

“It is unfortunate a program is allowed to receive more money than it spends especially when that money could have been put to better use to help business and employees in job-training and job-creation. Investing in a trained workforce ensures that workers can transition to the changing economy. A prepared and skilled workforce is the best incentive to attract business and industry to Texas. Unlike TEF, SDF has been evenly distributed throughout Texas, including in the border and rural regions.

“Small and existing businesses are the backbone of any economy. SDF allows these businesses to take their employees to the next level of skills so the employee and the business can grow and maintain their economic viability in these changing markets. These are not businesses that necessarily qualify for TEF.

“Furthermore, there is almost never any evidence to suggest programs such as TEF work. Subsidies are not usually the deciding factor for corporate relocation. Texas has been known for its favorable business climate. There are 56 Fortune 500 companies in Texas – more than in the state of California – many of which have been here long before TEF. Investing in a trained workforce ensures that workers can transition to the next market so that Texas can continue to attract business and industry because the workforce is prepared.

“Lastly, as William Grieder wrote in the foreword to *Great American Jobs Scam: Corporate Tax Dodging and the Myth of Job Creation*:

‘Vast sums of public financing are squandered across the nation in transactions that are often no more than a friendly handshake and a press release. Scarce tax revenue is diverted to private interests with no real guarantee that anything at

all will be created for the common good. ... Public money should be devoted to public purposes, ideally for long-term improvements that can be expected to benefit everyone, including future generations.”

Sen. Judith Zaffirini, the Senate sponsor, said: “Countless business leaders share my chagrin that Gov. Rick Perry vetoed HB 48 by Rep. Norma Chávez. This important legislation would have maintained original funding levels for the Texas Enterprise Fund (TEF) and the skills development program at a split of 67 percent to 33 percent, instead of allowing these levels to shift to a split of 75 percent to 25 percent, beginning on September 1, 2007. At the request of the Texas Border Coalition and community colleges, businesses, and workers in the border region, I sponsored HB 48 to provide the necessary skilled training to keep our Texas workforce competitive in the midst of a dynamic global economy. While the Legislative Budget Board estimates that TEF has retained between a \$74 million and \$84 million surplus during the last biennium, the Texas Workforce Commission (TWC) estimates that there are three requests made for every dollar spent on training and skills development. What’s more, while Gov. Perry states that TEF has brought more than 45,000 jobs to Texas, he does not mention that the currently under-funded skills development program has created 61,134 jobs and trained an additional 106,976 workers since its inception.

“The governor’s assertion that HB 48 ‘needlessly reduces funding’ for TEF is wholly incorrect. In fact, HB 48 would have maintained funding for the TEF at its current level, while also allowing necessary funding to continue to support our skills development program that is essential to the growth of the Texas economy. Again, the governor was ill-advised.”

NOTES: HB 48 was analyzed in the March 26 *Daily Floor Report*.

Allowing Texas A&M and the University of North Texas to issue additional TRBs

HB 317 by Miller (Fraser)

DIGEST: HB 317 would have eliminated the statutory enrollment equivalent of 1,500 full-time students that is required before the Texas A&M University System and the University of North Texas System may issue tuition revenue bonds (TRBs) for Texas A&M University –Central Texas, Texas A&M University–San Antonio, and the University of North Texas at Dallas.

Under current law – HB 153 by Morrison, 79th Legislature, third called session – the Texas A&M University System is authorized to issue additional TRBs for \$25 million for its Central Texas campus and \$40 million for its San Antonio campus, and the University of North Texas System is authorized to issue TRBs for \$25 million for its Dallas campus. The bill would have allowed the systems to issue these bonds in fiscal 2008, rather than after the enrollment requirements had been met.

The bill also would have required the Texas Higher Education Coordinating Board to conduct a study to determine the merits of permitting a public higher education institution to issue bonds for funding capital projects at branch campuses, extension centers, system centers, and multi-institutional teaching centers, regardless of the level of student enrollment.

GOVERNOR'S REASON FOR VETO:

“House Bill No. 317 would repeal sections of the Texas Education Code that set enrollment requirements for the issuance of tuition revenue bonds (TRBs) for three small branch campuses, or ‘centers.’ The bill as filed would lower enrollment requirements for Tarleton State University Center – Central Texas. House Bill No. 317 was amended to remove requirements completely for that center, as well as the University of North Texas System Center at Dallas and the Texas A&M University System Center at San Antonio.

“The TRBs for the centers were authorized during the Third Called Special Session of the 79th Legislature with the understanding that the enrollment requirement necessary for their issuance would be set at 1,500 students for one semester, at which point they would have already become stand-alone institutions of higher education. It is my position that the centers should reach stand-alone status prior to the issuance of TRBs.

“Furthermore, the centers have not experienced significant growth. In fact, their enrollment has remained relatively flat. This indicates that the centers are appropriately serving their area’s educational needs without additional facilities. The repeal of the enrollment requirements necessary for the issuance of TRBs would result in greater state appropriations and sets a bad precedent for the future.”

RESPONSE: Rep. Sid Miller, the bill’s author, said: “Many central Texas soldiers, their families, and community leaders were very disappointed by the governor’s veto. The local community has put \$8 million cash into creating a stand-alone university, and Fort

Hood has set aside 661 acres for a site to build the campus at an estimated worth from \$2 million to \$4 million. It is a shame that everyone has done their part but the state. Our soldiers deserve better.

Sen. Troy Fraser, the Senate sponsor, was unavailable for comment.

NOTES: HB 317 was analyzed in Part One of the April 25 *Daily Floor Report*.

Revising standards for contracts for government construction projects

HB 447 by Callegari (Jackson)

DIGEST: HB 447 would have consolidated statutes regarding contracting methods for public works contracts for governmental or quasi-governmental entities. It would have applied to state agencies, junior colleges, and local governments such as counties, cities, school districts, and hospital districts. An entity could have awarded a contract using the following methods in addition to competitive bidding:

- competitive sealed proposal method;
- construction manager-agent method;
- construction manager-at-risk method;
- design-build method; and
- job order contracts method.

Use of the design-build and job order contract methods would have been restricted to buildings. The bill would have restricted use of interlocal agreements and reverse auctions in which bidders submit anonymous bids to an Internet location. It would not have applied to Texas Department of Transportation highway projects, regional tollway authorities, university systems, port authorities, or contracts for energy or water conservation.

GOVERNOR'S REASON FOR VETO:

“House Bill No. 447 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.

“A very similar bill, House Bill No. 2525, was vetoed in the 79th Legislative Session based on similar concerns.”

RESPONSE: Rep. Bill Callegari, the bill’s author, said: “HB 447 would have consolidated and expanded the state’s construction contracting law to help governmental entities in Texas. The veto justification provided by the Governor’s Office ignores the benefits that HB 447 would have provided while relying on assertions that defy rational analysis. For example, the statement claims that my bill would ‘discourage competition in public sector capital project development’ by limiting governments’ contracting methods. That is simply not true. HB 447 did not limit governments’ contracting options; it expanded them to provide greater flexibility in selecting construction contracts. Moreover, the bill authorized more governmental entities, such as hospital districts, transit authorities, and junior colleges, to use additional contract selection processes. If anything, HB 447 expanded the tool box that governments can use for selecting contractors that can best meet their needs, and broadens the types of governmental entities eligible to use that tool box. Precisely how these changes in the law limit what governments may do, as the governor’s statement asserts, remains inexplicable. The claim that HB 447 would ‘discourage competition’ remains equally baffling.

“The governor’s veto statement goes on to assert that my bill imposes ‘extra contracting requirements.’ Again, this is simply not true. Beyond expanding the tools that more governments may use for contracts – which is a far cry from imposing extra contracting requirements – my bill consolidated several existing chapters of state law governing these contracts into one. Going back to the toolbox metaphor, my bill took several instruction manuals regarding the same tools, consolidated them into one document, and made them more user-friendly. This change would have simplified our statutes while improving transparency with regard to the state’s expectations regarding contracting procedures. All of the contracting requirements in this new, consolidated chapter of law existed well before HB 447 was introduced, and some of them for as long as 10 years. To assert that my bill added new, extra contracting requirements betrays an unfamiliarity with our laws as they currently exist.

“The veto statement further asserts that my bill would ‘likely result in increased costs and project delays for taxpayers.’ This specious conclusion ignores the facts provided in the Legislative Budget Board’s (LBB’s) fiscal note for HB 447. That fiscal note read as follows: ‘No significant fiscal implication to the State is anticipated.’ Other veto statements signed by the governor clearly hinge on the LBB’s analysis. In the case of HB 447, however, the LBB’s measured calculations were eschewed in favor of an unsubstantiated claim. As a fiscal conservative myself, I am bewildered with regard to how the veto statement arrived at the tortured conclusion that my bill would cost state governments more. The contracting flexibility provided by my bill would have helped Texas governments save time and money. As a final comment on this subject, I ask the rational reader to consider this: how could the consolidation of existing chapters of state law result in increased project costs and delays? The answer is simple: it would not.

“Unlike the statement’s assertions, my bill actually offered several crucial reforms that would have helped save taxpayers dollars and, more importantly, stop the potential for the mismanagement of public funds. For example, one provision that was brought to me by the Katy Independent School District within my district would have allowed school districts to save money when purchasing insurance products. Another provision would have provided critical reforms to the area of job order contracting. Several of these reforms were identified in an interim study by another House committee as a way to curb potential abuses and bring transparency to the job order contracting selection process. Now, with the governor’s veto, these savings and these critical reforms will have to wait for another two years.

“Of course, no legislator is apt to greet news of their legislation’s veto with any particular degree of enthusiasm. Passing bills in a process designed to kill them is practically a Herculean task. I try my best to work with others when attempting to pass legislation. Building consensus, albeit a laborious task, works with regard to legislative efficacy. My style is to involve all stakeholders in the legislative process. What I did for HB 447 was no different, and the bill reflects the input of scores of interested parties and several stakeholders meetings that I held. Many of the interest groups that I worked with on this bill, including design professionals, contractors, cities, school districts, junior colleges, state agencies, universities, water districts,

and utilities, voiced their support for HB 447. After filing the bill on January 3rd of this year, I offered the Governor's Office many opportunities to provide input. None was provided. In fact, several times during the legislative session the governor's representatives told me that they had no objection to HB 447. Now, well after the session has concluded, I learn that there was a problem despite my repeated entreaties for the governor's staff to offer constructive comments on the bill. I am sincerely disappointed that I was not extended the same courtesy that I had offered the Governor's Office throughout this session.

“Simply put, the explanation for this veto does not pass logical muster. In light of this, I am ready to discuss the real reasons for this veto at any time. Towards that end, I welcome the governor, or a member of his staff (perhaps the one who wrote the veto statement), to discuss the real reasons for this veto at any time.”

Sen. Mike Jackson, the Senate sponsor, said: “The governor's veto of HB 447 is the result of misguided information. The legislation was agreed upon by all interested parties, which included architects, contractors, engineers, governmental entities, construction companies, and job-order contractors. After months of negotiations, the end result was a comprehensive piece of legislation that would have been the most important reform in construction procurement methods in the last 10 years. It would not have limited construction contracting options, but rather expanded the flexibility in governmental entities' selection process.

“This bill consolidated the methods already used by cities, counties, school districts, universities, and other government agencies into one statute in the Government Code. HB 447 expanded construction project delivery methods to other entities that include hospital districts, junior colleges, and transit authorities, to name a few. Also, it allowed new project delivery methods to be used for horizontal and vertical construction while limiting the use of interlocal agreements for design and construction services that should be site-based.

“From the time this bill was filed on both House and Senate sides, job-order contracting remained an issue. After diligently working with the concerned parties, we were able to initiate a compromise that job-order contracts can be used for contracts under \$500,000 and ‘in the case of maintenance, repair, alteration, renovation, remediation, or minor construction of a facility when the work is of a recurring nature but the delivery times, type, and quantities of work required are indefinite.’

“The final version of HB 447 also included some much needed legislation in the form of amendments. Most notably, I added an amendment during the committee process that would have allowed the state to recover funds from school districts that file suit alleging defect in design or construction of a facility that is paid for by a percentage of bonded indebtedness from the state. In one instance, a school district is seeking over \$900 million in damages and fees against eight defendants for the design and construction of 11 buildings. If all of these damages are awarded to the district, there is no law that requires the district to return any of the money to the state. If this bill would have been signed into law, the state would have had an opportunity to protect

its monetary interests and/or receive a proportionate percentage of the settlement that would be sent to the comptroller as well as require the recovered funds to be utilized for the repair of the defective design or construction.

“I do not believe HB 447 would have discouraged competition, limited how government may contract for design and construction services, or increased costs and project delays for taxpayers. As the owner of a construction business, I believe this bill would have encouraged competition for construction services, thus saving governmental entities money, streamlined project delivery methods into a single chapter of the Government Code, and addressed several issues that would have increased revenue to the state.”

NOTES: HB 447 was analyzed in Part Two of the April 18 *Daily Floor Report*.

Allowing release on bond of certain parolees in jail awaiting parole revocation hearings

HB 541 by Martinez Fischer (Hinojosa)

DIGEST: HB 541 would have allowed certain parolees who had been arrested and were being held in a county jail to be released on bond pending their parole revocation hearing.

Magistrates could have released persons accused of committing an administrative violation of their parole or accused of committing certain misdemeanors. Parolees accused of family violence offenses and class A or class B misdemeanors that were offenses against persons or intoxication and alcoholic beverage offenses would not have been eligible for release on bond.

To release a parolee, a magistrate would have had to find that a parolee was not a threat to society, and the parole division of the TDCJ would have had to include notice on the arrest warrant that the person was eligible for release on bond. TDCJ would have had to include this notice on the arrest warrant if it determined:

- that the person had not been previously convicted of robbery, a felony offense against a person, or any family violence offense;
- was not on intensive or super-intensive supervision;
- was not an absconder; and
- was not a threat to public safety.

GOVERNOR'S REASON FOR VETO:

“House Bill No. 541 would allow some parolees who have been arrested for violating the terms of their parole to be released on bond from jail. Currently a parole violator is not authorized to have bail set so that they may be released on bond. Although House Bill No. 541 applies only to administrative violations and certain misdemeanor offenses, these offenders should not be given freedom when their return to prison or other sanctions are imminent, particularly considering that the top 10 fugitives being sought by the Department of Public Safety are parole violators. I understand and am sympathetic to the concerns of counties that are experiencing capacity problems at their jails because of the number of parole violators they must house, but I believe this bill will have negative unintended consequences, and other alternatives should be considered to lessen the burden on county jails.”

RESPONSE: Rep. Trey Martinez Fischer, the bill’s author, said: “Texas is on the verge of a crisis. Nearly every urban county jail is at its fullest capacity. According to the most recent Jail Population Report from the Texas Commission on Jail Standards, Texas jails are 86 percent full. Each day there are fewer and fewer beds to house prisoners. We must prioritize protecting Texans from the most dangerous criminals. HB 541 would have allowed bonding for certain parole violators who were not a threat to public safety and would have saved Texas counties as much as \$50 million dollars per year, freeing up space to incarcerate the most threatening common criminals.

“Mentioning the ‘Ten Most Wanted’ list in his veto message highlights the governor’s lack of understanding of the criminal justice system and HB 541. None of those criminals would have been eligible for bond because of HB 541. The fact that the ‘Ten Most Wanted’ are all parole violators is evidence of a parole system that is overtaxed and fundamentally flawed.

“HB 541 could have alleviated some of the pressure felt both at the county and the state, improving the system for all levels of government. The governor cannot have it both ways. He cannot talk tough about crime and then hamstring a county’s ability to actually protect its citizens. He cannot preach about fiscal discipline and then prevent counties from saving money by focusing incarceration on those that are a genuine threat to public safety. Finally, he ought not beat his chest about balancing budgets, all the while thousands of state inmates are being jailed on the counties’ dime.

“What this veto guarantees is that sometime in the next two years, a county will have to make a hard choice about the incarceration of a dangerous criminal. The county can change the level of custody of the dangerous criminal, but it cannot bond out the state inmate who only technically violated his or her parole. I would rather use the taxpayers’ money to jail the dangerous criminal and monitor the technical violator. However, the governor’s veto insures that the opposite will happen and that shouldn’t make anyone feel very safe or secure.”

Sen. Juan Hinojosa, the Senate sponsor, had no comment on the veto.

NOTES:

HB 541 was analyzed in Part Four of the *May 7 Daily Floor Report*.

Allowing community colleges to offer in-district tuition to certain students

HB 544 by Strama (Watson)

DIGEST: HB 544 would have allowed public junior colleges to offer in-district tuition rates to students living outside the district who demonstrate financial need.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 544 would allow community colleges to offer in-district tuition rates to out-of-district students who have financial need. This is objectionable because taxpayers in the district should not foot the bill for students who live outside the district. A better alternative would be for communities within a service area of a community college to join the district and therefore pay their fair share of the costs of educating their citizens.”

RESPONSE: Neither Rep. Mark Strama, the bill’s author, nor Sen. Kirk Watson, the Senate sponsor, had a comment on the veto.

NOTES: HB 544 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Changing enrollment counting methods for three higher education system centers

HB 589 by Aycock (Fraser)

DIGEST: HB 589 would have changed the methodology for counting full-time equivalent students to allow three higher education system centers to operate as stand-alone general academic teaching institutions once the enrollment equivalent reached 1,000 full-time students for one semester or one academic year. The enrollment for an academic year would have been calculated based on the semester credit hours generated during the fall and spring semesters and the summer session. Once the Texas Higher Education Coordinating Board certified enrollment at 1,000 full-time students, the Tarleton State University System Center–Central Texas in Killeen could have operated as Texas A&M University – Central Texas. Likewise, when enrollment at the Texas A&M University–Kingsville System Center–San Antonio and the University of North Texas System Center at Dallas reached the enrollment threshold, these institutions could have operated as Texas A&M University–San Antonio and the University of North Texas at Dallas, respectively.

GOVERNOR'S REASON FOR VETO:

“House Bill No. 589 again would reduce enrollment requirements for three small branch campuses, or ‘centers,’ to become free-standing general academic teaching institutions. The bill as filed would lower enrollment requirements for Tarleton State University System Center–Central Texas. House Bill No. 589 was amended to decrease requirements at the University of North Texas System Center at Dallas and the Texas A&M University System Center at San Antonio.

“These enrollment changes expedite eligibility for independent status and greater state appropriations. The bill thwarts the Higher Education Coordinating Board’s longstanding policy of requiring 3,500 full-time student equivalents necessary to determine when and where to establish new universities. The bill leads to seriously inefficient levels of appropriations to the centers.

“My position concerning further reductions to enrollment requirements for independent status was made clear in 2005 with the signing statements to Senate Bill No. 296 and House Bill No. 495, in which I said it was ‘my intention that no future deviation from the Coordinating Board standards occur.’

“Furthermore, it is disturbing that the Legislative Budget Board (LBB) fiscal note stated that there would be no implication to the state from the bill’s passage. This fiscal note is seriously misleading and prevented the legislature from acting with any knowledge of the bill’s cost. The Coordinating Board told the LBB that the bill would cost \$7.6 million for the 2008-09 biennium and another \$15 million in 2010-11 just for the Central Texas center. Dallas and San Antonio add to this cost exponentially. All of this information was ignored by the LBB.

“Taxpayers, members of the legislature, and I deserve to have honest fiscal notes that allow legitimate determination as to the true costs of bills so that realistic consideration of legislation can occur.”

RESPONSE: Rep. Jimmie Don Aycock, the bill’s author, said: “On behalf of myself, nearly one million Central Texans, and Fort Hood’s nearly 68,000 employees, I wish to take this opportunity to express my surprise and sadness that HB 589 has been vetoed.

“While HB 589 would not by itself have accomplished ‘free standing’ status for Texas A&M-Central Texas, it would have continued the move in that direction. The Senate amendments, while also helping the centers in Dallas and San Antonio, would not have brought either of these centers close to ‘free standing’ status and thus should not have been used as an excuse to veto the bill.

“This issue has been ongoing for more than 15 years and has been worked on by numerous members of the House and Senate. I will herein provide narrative about this issue that will hopefully: (1) record a response to Gov. Perry’s veto; and (2) provide context for any future consideration of this matter. The House Research Organization’s report from April 19, 2007, reflects the general nature of the arguments for and against HB 589.

“In direct rebuttal to the veto message regarding HB 589, I offer the following comments:

“The governor’s opening comments that the bill ‘would reduce enrollment requirements’ is not accurate. Education Code, sec. 87.861(d) establishes the ‘free standing’ threshold of 1,000 full time student equivalents (FTSE). Other sections of statute provide the exact same threshold for the other two centers as well. The bill’s only purpose was to clarify that the calculation of FTSE should be done on an annualized basis – a method in common usage by the Texas Higher Education Coordinating Board (THECB) – as opposed to the ‘single semester’ language currently in statute.

“The second paragraph refers to a policy of THECB that uses 3,500 FTSE as the measure for new universities. That is not the standard set by statute, nor is it presently met by several existing universities.

“In paragraph three, reference is made to ‘the Coordinating Board standards’ and ‘deviation[s]’ signed by Gov. Perry regarding SB 296 and HB 495. It is my contention that these statutes, passed by the Legislature and signed by the governor, established

the present requirements of 1,000 FTSE. While THECB may have a different opinion, present statutory law (Education Code 87.861(d)) and others should be the measure for ‘free standing’ status, not the ‘opinion’ of unelected officials.

“In the fourth paragraph, reference is made to fiscal estimates made by the THECB and the LBB. I contend that the LBB fiscal note of ‘no fiscal implication’ is correct in that no deviation from the present 1,000 FTSE threshold was requested save the method of calculation. All fiscal matters regarding Texas A&M–Central Texas were dealt with in separate bills. HB 317 by Miller (Fraser) was vetoed, and neither HB 1668 nor SB 211 passed. Regarding the costs for the other two centers in Dallas and San Antonio, neither would have benefited significantly from the annualized counting method and would still be years away from ‘free standing.’

“In a broader sense, I will now provide background and reasoning to support Texas A&M – Central Texas (TAMCT) advancement to ‘free standing’ status.

“First, TAMCT is needed to address the ‘accessibility needs’ of Central Texas. With the enrollment at Texas A&M College Station, and the University of Texas–Austin ‘capped,’ the only upper level public higher education courses available to Central Texas students are at Texas State University–San Marcos, Tarleton State–Stephenville, and the University of Texas–Arlington. All are more than 120 miles distant.

“Second, there is clearly ‘demographic need.’ The rapidly growing Central Texas area is projected to continue its growth into the foreseeable future. Of the approximately 1 million residents in the area, about 250,000 live within a 10-mile radius of the main gate to Fort Hood. This population is so racially diverse that the Tarleton Center is one of the few state institutions that reflects the diverse racial mix of today’s Texas. The major school districts of the area have enrollments of over 60,000 students.

“Third, there is an ‘economic need.’ Texas A&M–Central Texas has for many years been a priority request by Fort Hood. Fort Hood, which has one of the largest payrolls in Texas, employs approximately 68,000 people, and contributes well over \$7 billion to the Texas economy annually. Already, there are multi-million dollar contracts between the U.S. Army and Texas A&M. The potential for additional contracts is beyond description.

“Fourth, there has been considerable incentive offered to the state to encourage this issue. The greater-Fort Hood-area originally transferred over \$8 million in cash and assets to the State of Texas when the center first came into existence. Since then, more than \$7 million in ‘in-kind’ benefits have been provided to the state. Congress has agreed to the conveyance of 662 acres of land at a prominent intersection on Fort

Hood. This conveyance is bipartisan in its support and only awaits action by the state of Texas. The city of Killeen has made water and sewer available to the site and stands ready with further assistance.

“Fifth, there is an issue of ‘fairness need.’ Despite the incentives and above-explained need, the state of Texas has not spent one dollar for physical plant construction. Meanwhile, Dallas has received \$25 million and the Round Rock Higher Education Center has received \$27 million. It should be noted that the Tarleton center is more than 50 percent larger than the next largest center, even without state-funded buildings. Likewise, the funding for the Tarleton center has typically run about half that of the other centers while producing about twice the FTSE count.

“Sixth, there is a ‘patriotism need.’ It was especially troubling to receive the news of the veto only hours after the governor celebrated the opening of a plant in Austin where more than \$10 million was granted to a foreign company in preference to the needs of Central Texans, especially those serving at Fort Hood where more than 400 men and women have died in the War on Terror.

“Most troubling of all was the fact that my office was contacted by the Governor’s Office during session about nearly every bill I authored except HB 589. On numerous occasions I had discussed this bill with Gov. Perry’s staff on the House floor. There had also been extended discussions with THECB. At no time during those discussions was there any mention of the possibility of vetoing this legislation, which passed both chambers unanimously. To so abruptly veto this bill sends a very bad message to the citizens of Central Texas, the U.S. military leadership, and our congressional leaders who have worked toward the goal of higher education in Central Texas.

“In conclusion, let me respectfully and imploringly request that THECB, Gov. Perry, the legislative leadership, and any other interested parties assist in addressing this important part of ‘closing the gaps’ in higher education in Texas.”

Sen. Troy Fraser, the Senate sponsor, was unavailable for comment.

NOTES: HB 589 was analyzed in the April 19 *Daily Floor Report*.

Exempting personnel of certain airports from fire fighting training

HB 738 by Bonnen (Jackson)

DIGEST: HB 738 would have exempted a person employed by certain airports serving unscheduled large aircraft flights from being certified for aircraft fire fighting and rescue fire protection without the training prescribed by the Texas Commission on Fire Protection.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 738 would permit a person employed by a Class IV airport, which has an Airport Operating Certificate from the Federal Aviation Administration, to be appointed to a paid position with aircraft firefighter responsibilities.

“However, this bill would unnecessarily impact the standardization of airport firefighting and the regulatory authority of the Texas Commission on Fire Protection (TCFP). I am confident the TCFP can use its existing statutory authority when necessary to address unique situations of an airport in a manner that balances the needs of the airport with its regulatory framework.”

RESPONSE: Rep. Dennis Bonnen, the bill’s author, had no comment on the veto.

Sen. Mike Jackson, the Senate sponsor, said: “I was disappointed to learn that HB 738 had been vetoed because the bill would have saved the small Brazoria County Airport from paying for expensive and unnecessary structure fire training. The airport has been in existence for more than 26 years and its employees have never responded to a structure fire and never will. The airport is equipped with emergency response fire fighting equipment on the field and their technicians have training to respond to aircraft fires only. They remain in compliance with all Federal Aviation Administration safety requirements.”

NOTES: HB 738 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Requiring TDCJ to notify released offenders of the right to vote

HB 770 by Dutton (Lucio)

DIGEST: HB 770 would have required the Texas Department of Criminal Justice to provide written notice to offenders who were released from its custody or supervision that they may be eligible to vote if they were no longer subject to the conditions prohibiting felons from voting in current law. TDCJ also would be required to give the offender an official voter registration application.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 770 requires the Texas Department of Criminal Justice (TDCJ) give written notice to each convicted felon released from prison, or whose parole or probation ends, that they are eligible to vote, and requires the Texas Department of Criminal Justice to provide former inmates with a voter registration form. This legislation is objectionable for several reasons. First, registering former inmates to vote is not within the mission of TDCJ. Their role is to incarcerate and rehabilitate offenders, and we should not divert resources away from this difficult task by mandating that TDCJ register inmates that are leaving the system or track down each convict when their parole or probation is over to encourage them to vote. In the 78th regular session, I vetoed a similar piece of legislation, House Bill No. 1517, that was less onerous than this – it required that the state post notice to released felons of their right to vote. Second, the state does not currently provide this service to law-abiding citizens, such as high school graduates who are new to voting. I find it unseemly that the state would make a greater effort to register former inmates to vote than we would any other group of citizens in this state. Third, when an individual is released from prison and their rights are restored, it is imperative that they take personal responsibility for all aspects of their life, including their right to vote. Lastly, nothing in current law precludes any political party or organization from organizing a voter registration drive among released convicts. In fact, a large amount of resources is dedicated each election cycle to registering Texans not currently on the voter rolls. But government should not make it a greater priority to register to vote those who broke our laws than those who have abided by them.”

RESPONSE: Rep. Harold Dutton, the bill’s author, said, “I am not sure I understand the governor’s reason for the veto. What is wrong with putting this requirement into statute since TDCJ already is largely doing what the bill required? The bill would be one way to let persons know about current law, which allows some felons who have fully discharged their sentences to be allowed to vote, and would have had no fiscal impact on the agency.”

Sen. Eddie Lucio, the Senate sponsor, had no comment on the veto.

NOTES: HB 770 was analyzed in Part One of the April 11 *Daily Floor Report*.

Allowing Kickapoo tribe to hunt certain deer for religious rites on any day

HB 971 by T. King (Uresti)

DIGEST: HB 971 would have allowed a documented member of the Kickapoo Traditional Tribe of Texas who held a hunting license to hunt antlerless white-tailed deer for religious ceremonial purposes on any day of the year between one-half hour before sunrise and one-half hour after sunset.

**GOVERNOR'S
REASON FOR
VETO:**

House Bill No. 971 would require the Texas Parks and Wildlife Department (TPWD) to issue a year-round license exclusively to members of the Kickapoo Traditional Tribe of Texas for hunting antlerless white-tailed deer. This would circumvent TPWD authority to regulate hunting and wildlife management in the State of Texas.

RESPONSE:

Rep. Tracy King, the bill's author, said: "I was surprised at the veto, since HB 971 would have given the Kickapoo Traditional Tribe of Texas the fundamental right to freely express their sincerely held religious beliefs through traditional ceremonies. The bill had been narrowly drafted to limit the hunting of antlerless white-tailed deer to Kickapoo land or to land where explicit permission had been granted by the private landowner and only in the quantities their Texas hunting license permitted. Freedom of religion is an important issue to all Texans, and I will continue to serve District 80 to protect every citizen's rights."

Sen. Carlos Uresti, the Senate sponsor, said: "I am disappointed in Gov. Perry's veto of HB 971. This was negotiated language developed to resolve a barrier to the religious practices of the Kickapoo Traditional Tribe of Texas. TPWD was consulted in the process of fine-tuning this language, and some of the TPWD's suggestions were incorporated. With this veto, Gov. Perry ensures that Texas law will continue to prevent the Kickapoo from conducting religious and ceremonial rites, as prescribed by Kickapoo religion, oral tradition, and tribal custom."

NOTES:

HB 971 was analyzed in Part One of the April 25 *Daily Floor Report*.

A substantially similar bill, HB 2159 by Garza (Madla), was enacted by the 78th Legislature during the 2003 regular session and also was vetoed by Gov. Perry.

Authorizing Texas Commission on the Arts mini-grant award process

HB 1023 by Berman (Watson)

DIGEST: HB 1023 would have authorized the Texas Commission on the Arts to adopt rules to delegate to the executive director authority for approving grants of less than \$500. The commission would have had to review grants approved by the executive director at its next regularly scheduled meeting.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 1023 would add the Texas Commission on the Arts’ (TCA) mini-grant process to the agency’s enabling legislation to reflect the current rules and practices of the commission.

“Current state law reflects only the commission’s annual grant process. In the mini-grant process, the commission delegates the authority to approve grant awards of \$500 or less to the executive director. The awards are reviewed quarterly by the full commission.

“Awarding grants is one of three primary functions of the TCA and should, therefore, be a process that the commissioners actively engage in. Current statute requires the commission to ‘develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director.’ The mini-grant process circumvents the commissioners’ role in grant approval by allowing the executive director to approve grant awards. Commissioners need to do their job.”

RESPONSE: Neither Rep. Leo Berman, the bill’s author, nor Sen. Kirk Watson, the Senate sponsor, had a comment on the veto.

NOTES: HB 1023 passed the House on the Local, Consent and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Revising the criminal trespass statutes

HB 1092 by Hilderbran (Wentworth)/SB 182 by Wentworth (Hilderbran)

HB 1129 by Macias (Wentworth)/SB 1097 by Whitmire (Noriega)

DIGEST: HB 1092 and SB 182 would have amended the Penal Code, sec. 30.05 to make trespassing in a recreational vehicle (RV) park a class B misdemeanor. HB 1092 also would have added Penal Code, sec. 30.07 to make trespassing on the docking place of a watercraft a class B misdemeanor.

HB 1129 and SB 1097 would have reduced the penalty for criminal trespass from a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) to a class C misdemeanor (maximum fine of \$500). A subsequent offense would have been a class B misdemeanor if the prosecution showed during the trial that the person had been convicted of the offense previously.

GOVERNOR'S REASON FOR VETO:

“HB 1092, HB 1129, SB 1097 and SB 182 all seek to amend the offense of criminal trespass by creating certain places that are subject to criminal trespass. Current statute covers the places identified in these bills, which renders this legislation redundant. If there are problems, the State of Texas should address criminal trespass issues in a comprehensive manner that makes the system consistent for enforcement and punishment.”

RESPONSE:

Rep. Nathan Macias, the author of HB 1129, said: “I am very disappointed that the governor decided to veto this legislation. The legislation was aimed at the severity and cost of the penalty, not just the specific location given in the reason for the veto. My intention was to better match the penalty to the crime, and to keep our limited law enforcement resources out in the community where they are most effective.”

Rep. Harvey Hilderbran, the author of HB 1092 and the House sponsor of SB 182, said: “We filed this legislation to address concerns brought to our attention by the Texas Association of Campground Owners. According to public testimony during the hearing process, a clarification of current trespassing law is needed to help law enforcement better enforce a problem that RV park owners statewide have been experiencing for some time. The testimony stated that current laws are unclear in regards to responding to trespassing violations reported by RV park owners and effectively addressing these situations as they occur around the state. This is due to the RV parks being perceived as something other than a service establishment and, therefore, not afforded the rights of most business owners regarding trespass violations.

“Gov. Perry felt that current law covers the provisions within this legislation, and we respect his decision on that. We will continue to work with the Texas Association of Campground Owners to make sure that current law addresses their concerns.”

Rep. Hilderbran also cited the following statement from the Texas Association of Campground Owners (TACO): “TACO is disappointed with the governor’s recent veto of two important bills to the RV campground industry.

“The bill addressing criminal trespassing on RV parks was essential to local law enforcement, justices of the peace (JPs), local district attorneys, and RV park owners. More than anything, the bill provided the clarification needed and requested by local law enforcement and JPs to help them better enforce a problem that RV park owners statewide have been experiencing for some time.

“The governor’s veto message stated that the current statute ‘covers the places identified in these bills,’ yet the bill was in response to local law enforcement and JPs that do not believe the law is clear in regards to responding to RV park owners and how local law enforcement can effectively address these situations as they occur around the state. This is due to the RV parks being perceived as something other than a service establishment and, therefore, not afforded the rights of most business owners regarding trespass violations.

“It is regrettable that this veto negated the work of many well intentioned parties to clarify the law. TACO will work with the respective Senate and House authors throughout the interim to study this issue again and seek a solution to this ongoing problem.

“TACO is very involved in the tourism industry and the development of new commerce within Texas. In fact, it was one of the first associations to support Gov. Perry’s Texas One Project because it believes in new business coming to Texas. The governor’s veto was an unfortunate set back as to how RV parks operate day to day.”

Sen. Jeff Wentworth, the author of SB 182 and the Senate sponsor of HB 1092 and HB 1129, said: “SB 182, HB 1092, and HB 1129 were bills to address specific needs of law enforcement to be able offer adequate protection for the citizens of Texas.

“SB 182, and its companion bill HB 1092, were filed to address a problem that owners and operators of recreational vehicle parks face when trying to remove individuals that are on or in that property without the consent of the owner.

“Peace officers and prosecutors had suggested the legislation because, as the statutes are currently written, it is not clear when or if an offense occurs when an individual is on the property of a recreational vehicle park without consent.

“Although filed as companions, the two bills differed as finally passed because HB 1092 was amended to add a provision to the Penal Code to create the offense of ‘Trespass on Docking Place’ as a class B misdemeanor.

“SB 182 and HB 1092 would have clarified that an offense occurs if a person enters or remains on the property of a recreational vehicle park without effective consent.

“HB 1129 was intended to address a problem of the inefficient use of the arresting officer’s time that occurs when a person is arrested for residential trespass. Although it is a non-violent crime, trespass on a person’s residential property may be made to seem more serious if multiple violations are occurring simultaneously.

“Under current law, residential trespass is a class B misdemeanor, and violators must be transported to jail once an arrest is made. The arresting officer must then spend hours booking the suspect into jail, thereby making the officer unavailable to make other arrests for the same or other offenses.

“In the city of New Braunfels, in my Senate district, persons floating the river frequently exit the river through residential property without permission. At times, the number of violators makes it impractical to enforce the residential trespass statute as it is currently written.

“HB 1129 would have classified residential trespass as a class C misdemeanor, allowing law enforcement officers to cite offenders rather than arrest them and transport them to jail.

“To say, as the governor did in his veto message of these bills, that these bills are redundant because current law already covers these places is – how can I say this politely – a statement not based in fact.

“We have better things to do in a regular session than pass redundant bills.

“Each of these bills was brought to the legislature because a problem exists, and we were asked to fix it. We drafted legislation, held hearings where Texans with some knowledge of the situation testified under oath, and both houses of the legislature addressed the concerns with a solution in each case.

“Subsequent to our fixing the problems brought to us by our constituents, the governor ‘un-fixed’ both problems with his veto. Thanks a lot, governor.”

Sen. John Whitmire, the author of SB 1097, had no comment on the veto.

NOTES:

HB 1092 and SB 182 passed the House on the Local, Consent, and Resolutions Calendar and were not analyzed in a Daily Floor Report.

HB 1129 was analyzed in the April 10 *Daily Floor Report*, and SB 1097 was analyzed in the May 15 *Daily Floor Report*.

Repealing independent procurement authority by the Texas Lottery Commission

HB 1179 by Flores (Nelson)

DIGEST: HB 1179 would have repealed statutory authorization for the executive director of the Texas Lottery Commission to establish procurement procedures for the commission. The bill instead would have applied to the Texas Lottery Commission general state law governing purchasing and contracts by state agencies.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 1179 would require the Texas Lottery Commission to adhere to the general procurement policies of the state that are governed by the Texas Building and Procurement Commission (TBPC).

“Since its creation, the Lottery Commission has been allowed to independently negotiate purchases rather than going through the TBPC procurement process. Although it has proceeded independently, the Lottery has followed the same practices as the TBPC, resulting in effective evaluation and selection of contractors and contracts that include the required statutory provisions.

“I support the philosophy behind House Bill No. 1179 of promoting competition in the marketplace and protecting the state’s interests with respect to procurement practices. However, I am vetoing House Bill No. 1179 because the Lottery negotiated many of its contracts based on its current procurement process. Eliminating the purchasing flexibility in the Texas Lottery Commission’s procurement process could jeopardize its future success.

“The Lottery should retain its flexibility in purchasing because the agency is contracting for and operating a unique business that deals with a limited vendor community qualified to operate the games. These purchases are different from consumable goods, such as office supplies, that other agencies purchase and which TBPC rules are designed to cover.”

RESPONSE: Neither Rep. Kino Flores, the bill’s author, nor Sen. Jane Nelson, the Senate sponsor, had a comment on the veto.

NOTES: HB 1179 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Prohibiting employer job discrimination against volunteer emergency responders

HB 1205 by Keffer (Eltife)

DIGEST: HB 1205 would have prevented certain employers from firing, suspending, or otherwise discriminating against an employee who missed all or part of a work day while responding to an emergency as a volunteer emergency responder. The total amount of absences could not have exceeded 14 days in a calendar year without employer approval. An employer could have either reduced the employee's wages for missed time or required the employee to use specified leave time. The bill would have provided recourse for an employee whose employment was suspended or terminated while responding to an emergency, allowing the employee to file a civil action and entitling the employee to compensation of lost wages and reinstatement of benefits, seniority status, and the same or a similar job.

**GOVERNOR'S
REASON FOR
VETO:**

"House Bill No. 1205 would mandate that private employers give volunteer emergency responders time off from work without being terminated or suspended if the employee is responding to a disaster declared by the governor or president that includes a fire, hazardous materials spill, medical emergency, or other situation that poses an imminent threat of loss of life.

"Private employers should be allowed to continue to develop their own employment leave policies free of more government mandates. Further, this bill allows for a new civil cause-of-action to be created, thereby unnecessarily increasing litigation in the state. I remain steadfast in my opposition to creating opportunities for litigation."

RESPONSE:

Rep. Jim Keffer, the bill's author, said: "The people of Texas depend on volunteer emergency responders during a crisis, whether it be a car accident, a boat rescue, a wildfire, or a hurricane. However, volunteers may be less willing to lend their time if they fear losing their jobs.

"The intent of HB 1205 was to protect volunteer emergency responders who are called to duty and place their lives at risk everyday in order to protect others.

"While I felt that I worked effectively with Gov. Perry and accepted two amendments brought to me by his office, I am disappointed in his veto."

Sen. Kevin Eltife, the Senate sponsor, said he concurred with Rep. Keffer's comments.

NOTES:

HB 1205 was analyzed in Part Two of the May 8 *Daily Floor Report*.

Authorizing a summer program for the college of optometry at the University of Houston

HB 1427 by Alonzo (Zaffirini)

DIGEST: HB 1427 would have authorized the University of Houston College of Optometry to operate an optometry career summer program for economically and academically disadvantaged junior-level, senior-level, and post-baccalaureate students from public and private higher education institutions to encourage the pursuit of advanced studies and careers in the field of optometry.

The summer program would have offered study skills and optometry admission test preparation courses as well as courses designed to familiarize students with course work in advanced degree programs in optometry. To the extent possible, the program would have allowed students to obtain course credit from their respective institutions. Students would have been introduced to clinical work and extracurricular activities relating to the field of optometry.

The bill would have allowed the college to solicit and accept gifts and grants to fund the program, and the Legislature could have appropriated money for this purpose.

GOVERNOR'S REASON FOR VETO:

“House Bill 1427 would authorize the University of Houston to create a summer learning program for the College of Optometry through funding identified as a special item. This program has existed since 1987 with federal funding. In 2002, the federal grant ended, leading the university to request additional state funding in order to sustain the program. I believe the university should solicit other funds, or use some of the \$6.4 million it was appropriated for Institutional Enhancement, to fund this program identified as a priority.

“Higher education special item funding has ballooned out of control, increasing from \$66.9 million in FY 1986-87 to more than \$1 billion in FY 2008-09, an increase of 1,406 percent. I have several concerns about these items. First, many of them are advertised to the legislature as one-time requests, but funding of these projects – many of which have limited value to a school’s educational mission – often continues indefinitely. Second, there is limited accountability for these funds, because institutions usually do not report on their performance. Third, many of them address local projects instead of statewide needs. Lastly, some of them are not priorities for the institutions; therefore, they don’t request them. In fact, funding for this item was not requested in the University of Houston Legislative Appropriations Request.”

RESPONSE: Rep. Roberto Alonzo, the bill’s author, had no comment on the veto.

Sen. Judith Zaffirini, the Senate sponsor, said: “Texas likely will have fewer optometrists due to Gov. Rick Perry’s veto of HB 1427 by Rep. Roberto Alonzo. This bill would have assisted economically and academically disadvantaged students in obtaining advance college credit and developing a career path in optometry and, potentially, other health professions. The governor justifies his veto by claiming that ‘the university should solicit other funds’ to support this program and implies that this

legislation will be the basis for special item funding. The bill does not provide for an appropriation to the University of Houston but clearly states that the university may solicit gifts for this purpose. I can conclude only that he and his staff did not care to read the bill carefully before making an ill-advised political point.”

NOTES:

HB 1427 passed the House on the Local, Consent and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Eligibility of persons with discharged felony convictions for firearm possession and handgun license

HB 1503 by Lucio (Hinojosa)

DIGEST: HB 1503 would have amended the current definition of criminal conviction, as used to determine who is eligible for a concealed handgun license, to exclude adjudications of guilt or orders of deferred adjudication that have been otherwise vacated, set aside, annulled, invalidated, discharged, voided, or sealed under state or federal law. This definition of criminal conviction also would have been added to the Penal Code provisions that prohibit persons convicted of felonies from possessing firearms. The bill also would have defined felony conviction, for the purpose of a concealed handgun license and in the Penal Code provisions dealing with firearms, as offenses other than those designated as misdemeanors and other than those that do not contain all the elements of a felony offense.

The bill also would have exempted assistant district attorneys, assistant criminal district attorneys, and assistant county attorneys from certain Penal Code restrictions on the carrying of guns if the assistant prosecutor held a concealed handgun permit.

GOVERNOR'S REASON FOR VETO:

“House Bill No. 1503 would have been an acceptable bill that expands Texans’ right to carry concealed handguns were it not for an 11th hour amendment that creates unintended consequences. The unintended consequences arise from the bill’s attempt to redefine a criminal conviction by excluding, among others, those who have been convicted of a felony and discharged from prison. The troublesome provision could result in ex-convicts who have completed their sentences for murder, rape, robbery or other violent crimes being allowed to possess firearms immediately upon release from prison. This provision also could jeopardize the reciprocity agreements Texas has with other states involving concealed handgun permits.”

RESPONSE:

Rep. Eddie Lucio, III, the bill’s author, said: “All too often the assistant prosecuting attorneys of Texas who are charged with arguing the State’s case against criminals such as drug dealers, murderers, and rapists are subject to threats, not only on their lives but also the lives of their loved ones. These attorneys are public servants who do not have personal protection measures at their disposal beyond the courthouse in their day to day lives. The original version of HB 1503, which was overwhelmingly passed by the House and Senate, would have given assistant prosecuting attorneys across Texas the right to carry a concealed handgun and taken a step towards ensuring their personal safety outside the courtroom doors. We understand Gov. Perry’s interpretation of the language that was amended and we certainly appreciate his consideration of the bill. We will continue to call attention to this issue and to the severe need to protect those who open themselves up to violent threats in the fight for justice.”

Sen. Juan Hinojosa, the Senate sponsor, said: “The governor’s veto message on HB 1503 is not accurate. The governor asserts that a Senate amendment to HB 1503 would have had the unintended consequence of allowing ‘those who have been convicted of a felony and discharged from prison’ to obtain a concealed handgun license. But the Senate amendment would not have applied to felons who have served prison time.

Rather, under the plain language of the amendment, the term ‘discharge’ has a very narrow application to those who have not been convicted of a crime and who have not been sent to prison.”

NOTES:

HB 1503 was analyzed in Part One of the May 4 *Daily Floor Report*.

The provision in HB 1503 that would have exempted certain assistant district attorneys, assistant criminal district attorneys, or assistant county attorneys from certain Penal Code restrictions on the carrying of handguns was enacted as part of HB 2300 by Paxton, effective June 15, 2007.

Barring solicitation of employment involving personal injury by phone or in person

HB 1519 by T. Smith (Carona)

DIGEST: HB 1519 would have prohibited a chiropractor, physician, surgeon, private investigator, or any person registered by a Texas health care regulatory agency from soliciting employment pertaining to a personal injury stemming from an accident or disaster within 31 days of the injury. This would have included solicitations in person or by phone made to either the injured party or a relative of the injured party. A violation would have been a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 1519 does not include attorneys in the new section (d-1) it creates for the offense of barratry and solicitation of professional employment. The new section prohibits in person or telephone contact before 31 days have passed since an accident; however attorneys are included in the current law in section (d), which covers improper written communications. The criminal acts covered by the statute should contain identical provisions for all covered professions.”

RESPONSE:

Rep. Todd Smith, the bill’s author, said: “Attorneys were not included in HB 1519 because it is already a criminal offense and grounds for disbarment for an attorney to engage in in-person solicitation of accident victims at any point after an accident.”

Sen. John Carona, the Senate sponsor, said: “I am disappointed that Gov. Perry vetoed HB 1519. This bill would have provided reasonable restrictions on the solicitation of accident victims by medical providers and private investigators within 31 days of such accident. Had Gov. Perry not vetoed HB 1519, these accident victims would have had further protection against intrusion into their personal lives during this difficult time.”

NOTES:

HB 1519 was analyzed in Part Five of the May 7 *Daily Floor Report*.

Revising license fees for wine and beer retailers

HB 1667 by Geren (Brimer)

DIGEST: HB 1667 would have increased the standard fee charged for a wine and beer retailer's permit from \$175 to \$275 and would have raised the fee for a retail dealer's on-premise license from \$150 to \$250. The bill would have excepted fraternal and veterans organizations from these fee increases.

The fee in Dallas, Harris, and Tarrant counties for an original wine and beer retailer's permit and a retail dealer's on-premise license would have risen from \$750 to \$1,000, and the renewal fee for such a permit or license would have dropped to \$750 from \$1,000. The holder of a food and beverage certificate in these counties would have paid \$275 for a wine and beer retailer's permit and \$250 for a retail dealer's on-premise license.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1667 would increase the wine and beer permit fees in Dallas, Harris, and Tarrant counties while decreasing fees for wine and beer permit holders who also have a food and beverage certificate. The bill would increase the fee for: (1) a wine and beer retailer's permit by \$100; and (2) an original wine and beer permit in connection with a food and beverage certificate by \$250. The bill also would decrease the annual renewal of wine and beer retailer's permit by \$250, and create a fee for an original wine and beer retailers permit to organizations that costs \$175.

"The bill seeks to address a local issue of regulating neighborhood bars by increasing fees and exempting restaurants from fees created during the 79th Legislature. Many of these small establishments operate in converted houses or garages in neighborhoods that lack the deed restrictions that might restrict the location of bars to commercial thoroughfares.

"I am vetoing House Bill No. 1667 because regulating businesses that engage in the alcoholic beverage industry should be accomplished through local ordinances in conjunction with an increased presence of law enforcement to preserve public safety, not through increased fees that are intended to price out businesses from existence."

RESPONSE: Neither Rep. Charlie Geren, the bill's author, nor Sen. Kim Brimer, the Senate sponsor, had a comment on the veto.

NOTES: HB 1667 was analyzed in the April 19 *Daily Floor Report*.

Information included on an appeal bond

HB 1687 by Farias (Ellis)

DIGEST: HB 1687 would have required that an appeal bond state the defendant's name, date of birth, and driver's license or personal identification certificate number.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 1687 would authorize the inclusion of a person's name, date of birth, driver's license number or personal identification number on an appeal bond.

“The Supreme Court of Texas is conducting a review of Texas court rules that would identify information that should be included on various court records. I believe it is best to allow the Supreme Court to complete its review and determine what identifying information should be provided while protecting Texans against identity theft.”

RESPONSE: Neither Rep. Joe Farias, the bill's author, nor Sen. Rodney Ellis, the Senate sponsor, had a comment on the veto.

NOTES: HB 1687 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Granting local entities priority and establishing moratorium for certain toll road projects and restricting comprehensive development agreements

HB 1892 by W. Smith (Williams)/HCR 230 by W. Smith

DIGEST: HB 1892 would have established a two-year moratorium, with certain exceptions, on all statewide toll projects that involved a private entity operating or collecting revenue on a toll road. It would have created requirements for comprehensive development agreements (CDAs), including shortening their maximum duration, and new standards for interaction between the Texas Department of Transportation (TxDOT) and entities authorized to build toll roads. It also would have given county toll road authorities and regional mobility authorities (RMAs) the right of first refusal on any toll project the state proposed in their jurisdictions, allowing the entities free use of state property at any stage of development.

GOVERNOR'S REASON FOR VETO:

“House Bill No. 1892 jeopardizes billions of dollars of infrastructure investment and invites a potentially significant reduction in federal transportation funding. Projects important to fast-growth communities would be placed on hold without alternative financing mechanisms to get them constructed. Even more egregiously, the bill serves to break up the state highway system by permitting local control over state assets.

“While I support greater local decision-making authority over transportation planning, I do not support turning over state assets to local entities. By allowing local entities to seize state right-of-way at any moment, H.B. No. 1892 prohibits the Texas Department of Transportation’s ability to issue any road-based debt instrument, such as toll revenue bonds, comprehensive development agreements, and pass through financing deals. As a state that grows by 1,200 people each and every day, we must consider every viable option that will allow Texas to build a strong transportation infrastructure to support present and future growth.

“I am grateful that legislators are working with me in subsequent legislation to address these concerns I have expressed about H.B. No. 1892 and look forward to receiving Senate Bill No. 792 without delay.”

RESPONSE: Rep. Wayne Smith, the bill’s author, said: “HB 1892 originated because the Harris County Toll Road Authority (HCTRA) could not go forward with much needed transportation projects due to the fact that TxDOT was re-creating the concession fee model they were using with private entities requiring upfront payments for rights-of-way and access to the state highway system. If the public entity did not pay these concession fees, TxDOT would enter into long term contracts with private entities to construct these projects. These concession fee payments would have greatly reduced the number of projects that HCTRA could have constructed. However, allowing local toll road entities across the state to have primacy insures that projects can continue with local guidance and control. By keeping the toll funds in the hands of a local public entity, the surplus toll revenue can be used in local non-toll projects rather than transferring this surplus to the investors of private entities. Local control will allow more roads to be built locally and is in the best interest of the citizens and taxpayers of the state.

“HB 1892, as amended by Rep. Kolkhorst on the House floor, also placed a two-year moratorium on CDAs that have proven to be very unpopular with the citizens of Texas. CDAs are unpopular especially because of the confidentiality of the contracts, because of their long term nature (more than 50 years in some cases), and because large tracts of land through rural Texas are subject to condemnation. Furthermore, provisions of these contracts could include penalties to be paid by the state due to both underperformance of roads or if the state built competing roads within a certain distance of these privately owned toll roads. HB 1892 provided for a study committee to be formed to review these private projects to determine whether they are in the best interest of the long term transportation needs of the state and whether they were the best use of the citizens’ public infrastructure resources.

“HB 1892 passed in the House on third reading with only one ‘no’ vote and also passed in the Senate with little opposition. Therefore, the bill ultimately passed both the House and the Senate with sufficient support and was delivered to the governor’s desk with ample time for a veto override to have occurred during the regular legislative session, if it had been necessary. Furthermore, HB 1892 reaching the Governor’s Office in time for a potential veto override to occur was vital to the success of SB 792 because it facilitated swift technical negotiations with most of the parties interested in the transportation policy of our state.

“SB 792 is similar to HB 1892, but it has two significant differences. First, for some projects throughout the state, a market valuation analysis will be required to determine applicable toll rate(s). This provision addresses concerns that toll rates set by locally elected officials might be kept artificially low, which would then reduce the amount of revenue generated that could fund non-toll projects in the area. Thus, setting toll rates through a market valuation analysis will insure adequate funding for additional non-toll projects in a given area. Secondly, SB 792 includes provisions setting a timeline for action by a local toll entity wherein if they do not timely exercise their right-of-first-refusal, TxDOT can enter into a CDA with a private entity. As these changes were acceptable to both the author and sponsor of the bill, SB 792 was ultimately passed in both the House and the Senate with strong support.

“In conclusion, HB 1892 and its companion, SB 792, improved the method of contracting for toll roads in metropolitan areas and put on hold the further condemnation of large tracts of land through rural Texas until the study group comprised of three House appointees, three Senate appointees, and three governor’s appointees report their findings regarding CDAs to the 81st Legislature.”

Sen. Tommy Williams, the Senate sponsor, said: “Though I was disappointed that HB 1892 was vetoed by Gov. Rick Perry, I am pleased that we were able to work out a compromise on these issues in the companion to this bill, SB 792.”

NOTES: HB 1892 was analyzed in Part One of the April 10 *Daily Floor Report*.

SB 792 by Williams, et al. was signed by the governor on June 11. Notable changes in SB 792, compared with HB 1892, include increasing the maximum duration of CDAs, adding exemptions to the moratorium, and allowing TxDOT and the Texas Transportation Commission to take any reasonable action to ensure eligibility for federal funds are not compromised. The HRO analysis of SB 792 appeared in Part One of the May 17 *Daily Floor Report*.

HCR 230 by W. Smith, which would have made technical changes to HB 1892, also was vetoed by the governor because the veto of HB 1892 made the adoption of HCR 230 moot.

Revised standards for eminent domain authority

HB 2006 by Woolley (Janek)

DIGEST: HB 2006 would have modified the processes governing eminent domain proceedings, standards of evidence that may be considered by a court in the course of making decisions regarding compensation, obligations placed upon condemning entities, and the rights of previous owners to repurchase taken property.

As a basis for assessing actual damages to a property owner from a condemnation, HB 2006 would have allowed special commissioners to take into account evidence relating to the change in value of the property, including any injury or benefit to the property owner. If property was condemned for purposes related to the state highway system or a county toll project eligible for designation as part of the state highway system, special commissioners would have been required to consider diminished access to highways for any remaining property to the extent that it affected the present value of the property, including factors considered when determining market value for property tax purposes.

The bill would have defined “public use” as a use of property that allowed the state, a political subdivision, or the general public to possess, occupy, and enjoy the property. Governmental and private entities would not have been able to take property except for a public use and would have had to provide relocation services for displaced persons.

The bill would have allowed a previous owner to repurchase condemned property on which a public use was cancelled within 10 years of the acquisition at the price paid to the owner by the governmental entity at the time the property originally was acquired, rather than the fair market value of the property at the time the public use was canceled.

HB 2006 would have added the “Truth in Condemnation Procedures Act” to require a governmental entity, for each property or group of jointly owned contiguous properties to be condemned, to formally authorize by motion the initiation of condemnation proceedings at a public hearing by a record vote. The bill would have required entities that intended to acquire property for a public use to make a bona fide offer to acquire the property by voluntary purpose or lease.

In response to a request by the property owner under the Public Information Act, condemning entities would have had to furnish only documents relating to the condemnation of the specific property. Any condemning authority not subject to public information requirements would have had to serve property owners with notice prior to initiating proceedings.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 2006 contains two provisions that would vastly expand the cost to Texas taxpayers of public projects to the point where they grossly outweigh the bill’s benefits.

“It is important to balance the rights of Texas landowners whose land is acquired through eminent domain against the needs of the greater taxpaying public. However, two amendments were added in the 11th hour to House Bill No. 2006 that would send the cost of public projects spiraling beyond the amount Texas taxpayers should reasonably be required to pay. Estimates indicate the price tag would easily exceed \$1 billion above and beyond what is reasonable for state and local taxpayers.

“In essence, the state and local government would be over-paying to acquire land through eminent domain in order to enrich a finite number of condemnation lawyers at the expense of Texas taxpayers.

“I am greatly concerned that taxpayers will suffer and needed public projects will be dramatically delayed if we promote increased litigation by creating a new category of damages after a property has been condemned and property owners have already been paid fair market value for the land taken. Virtually every major city, county and high-growth area of the state asked me to veto this legislation because of the prohibitively high costs for future road construction and safety improvements and new schools that would be caused by these amendments.

“Specifically, I find extremely problematic the provision that would expand damages a landowner can recover to include any diminished access to the roadway from remaining property when a portion of a landowner’s property is condemned. Currently, a landowner is appropriately entitled to have reasonable access to their property maintained when a portion of their property is condemned. However, the provision contained in this bill would require large payments of taxpayer dollars for properties that continue to have reasonable access to the road but where that access has been only altered in some fashion. This is an unreasonable burden to place on taxpayers.

“The second problematic provision would greatly increase the cost taxpayers would pay to compensate an owner for the land which is left after some of the property is acquired through eminent domain. It would allow the recovery of damages for factors such as changes in traffic patterns and visibility of the property from the road. Texas courts have long disallowed this practice because it would make public projects that benefit the greater population prohibitively expensive to build.

“With plenty of time left in the legislative session, I asked the bill author in the House of Representatives and the bill sponsor in the Senate to work with my office to address these concerns and find a compromise. The Senate sponsor agreed while the House author did not.

“While I am firmly committed to ensuring increased fairness for Texas landowners, amendments added to an otherwise good bill very late in the process were done to enrich condemnation lawyers and place a disproportionate burden on Texas taxpayers who pay the bill in condemnation cases. Taxpayers should not have to bear the burden of legislation designed so that condemnation lawyers can exploit a new category of damages for their own personal gain. I encourage the legislature to continue to work

to strike a balance that allows Texas landowners to be treated with fairness and respect for their property rights while simultaneously asking their neighbors to pay only so much in taxes as is reasonable and necessary. I pledge to work with the legislature toward this goal.”

RESPONSE:

Rep. Beverly Woolley, the bill’s author, said: “Gov. Rick Perry’s veto of HB 2006, eminent domain legislation, is a grave injustice to every private property owner in Texas. The governor’s statement that the bill would slow down and shut down needed construction projects at the expense of taxpayers is simply disingenuous. To the contrary, HB 2006 sought not to forestall the march of progress but to protect the rights of innocent private property owners from being trampled by predatory entities seeking to build roads or other public-use projects without fairly compensating landowners.

“The genesis of HB 2006 was the U.S. Supreme Court’s unconscionable ruling in a lawsuit challenging eminent domain abuse in New London, Connecticut. In *Kelo v. City of New London*, the court upheld a private development corporation’s right to exercise the power of eminent domain by taking an entire neighborhood for private development. In her dissent, Supreme Court Justice Sandra Day O’Connor said, ‘The specter of condemnation [now] hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory.’

“In 2005, I co-authored eminent domain legislation to protect Texans’ private property rights in response to the U.S. Supreme Court’s unconscionable ruling in *Kelo*. That same year, I co-chaired the Joint Interim Committee on the Power of Eminent Domain. The work of this joint interim committee formed the basis for HB 2006.

“For many years, the courts have been chipping away at private property rights. HB 2006 would have restored many of those rights, providing important protections for private property owners faced with the threat of having their land taken through the power of eminent domain. The bill narrowed the definition of ‘public use’ to ensure that a taking of private property is only for traditional public uses – not for building a condo project or a shopping mall, as was the case in New London. It required a condemning entity to make a bona fide offer to a property owner and required good-faith dealings and fair compensation and treatment of property owners in eminent domain negotiations.

“HB 2006 made it mandatory for a governmental entity to take a public vote authorizing the exercise of the power of eminent domain, thereby shining the light of public scrutiny on such momentous decisions. Contrary to the governor’s declaration, it would not have provided a financial windfall for condemnation lawyers at taxpayers’ expense. Indeed, the protections contained in the bill would preclude the necessity of any lawyers at all because landowners would be treated fairly from the outset, allowing for a fair, negotiated price for land at no known cost according to the comptroller of public accounts, the attorney general, and the Legislative Budget Board.

“The breadth of support for HB 2006 was varied and stunning. Nearly three dozen public interest groups endorsed the bill, including the Conservative Coalition, the Texas Public Policy Foundation, the Houston Association of Realtors, the Texas Farm Bureau, the Association of Texas Soil and Water Conservation Districts, the Independent Cattlemen’s Association, and many other agricultural and ranching consortiums too numerous to mention here.

“As the citizens of New London found out, when the government or private entities representing it are allowed to brandish the far-reaching power of eminent domain – and can justify taking private property for the vague purpose of ‘economic development’ – all private property owners are in trouble. As a long-time supporter of private property rights, I authored and shepherded HB 2006 through the Legislature to save Texas property owners from suffering at the hands of unscrupulous entities in the name of questionable progress. An overwhelming majority of members of the Texas House and Senate agreed with the bill’s merits. It’s regrettable that Gov. Perry cast aside two years’ hard work and the will of the people with a single stroke of his veto pen.”

Sen. Kyle Janek, the Senate sponsor, had no comment on the veto.

NOTES: HB 2006 was analyzed in Part One of the *May 7 Daily Floor Report*.

Limiting the number of property tax freeze elections in some jurisdictions

HB 2087 by Hill (Wentworth)

DIGEST: HB 2087 would have limited to two in a 36-month period the number of petition-initiated elections to freeze property taxes for the residence homesteads of elderly or disabled property owners in a county, general-law city, or junior college district. A taxing entity would have been prohibited from holding a freeze election until the third anniversary of the second failed ballot measure to freeze property taxes.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 2087 violates Article VIII, Section 1, of the Texas Constitution, which requires a county, city or town, or junior college district, to hold an election to determine whether to limit property taxes on the homesteads of elderly or disabled persons if 5 percent of registered voters petition for such an election.

“House Bill No. 2087 would allow a governmental entity to refuse a petition by the voters for such an election if the same issue has been put to a vote twice in any 36-month period, thereby limiting voters’ ability to petition their government on an important taxation issue. Taxpayers should not have their right to vote to lower taxes limited for the convenience of election officials.”

RESPONSE: Rep. Fred Hill, the bill’s author, said: “The governor’s explanation as to why HB 2087 was vetoed concludes with the following remark: ‘Taxpayers should not have their right to vote to lower taxes limited for the convenience of election officials.’”

“The issue was clearly not for the ‘convenience of election officials.’ It was for the benefit of the citizens of the community that twice had voted not to have their taxes frozen. The taxpayers of the community, rather than having to go through such an election each year, had expressed a desire not to have to pay the \$36,000 that each election cost and be allowed to have two election cycles off in the event the issue had failed at the polls twice. The mayor, the spokesperson for the community, had indicated that a person whose age exceeded 65 was the occupant in 57 percent of the homes in the community. The consensus of the community was that the taxes were needed to maintain the services the majority of the citizens felt appropriate. The governor’s veto has forced the majority to comply with the desires of 5 percent of the citizens who are willing to sign a petition and force an election. The veto does not appear to have been well thought out and to be the response to a political group who petitioned the governor to veto HB 2087. I had been told during the last few days of the session by a governor’s staff member that the governor would not veto the bill.”

Sen. Jeff Wentworth, the Senate sponsor, said: “HB 2087 was a bill specifically aimed at helping the city of Windcrest in northeast Bexar County respond to the will of the voters and save taxpayer money. The city has had two petition-initiated elections to freeze taxes for seniors. Both times the referendum was defeated. Windcrest is the only city in the state to defeat the measure not once, but twice. The bill, therefore, would have applied only to Windcrest.

“The city has had declining sales tax revenues and a low rate of property valuations. Even though over 53 percent of the homes in the city are owned by persons over 65 years of age, the tax freeze was defeated because it would have had a severe impact on the city’s finances. The cost of frequent elections further erodes the financial situation. Windcrest, a general law city, would have been able to control the frequency of petition-initiated elections as home rule cities are allowed to do.

“The effect of the bill, had it been signed into law by the governor, would have been to save the citizens of Windcrest some of their hard-earned tax dollars. The effect of the governor’s veto will be to put those taxpayers at risk of wasting more of their tax dollars in the future.

“By the way, this bill had absolutely nothing to do with ‘the convenience of election officials,’ even though the governor’s veto message cites that as a factor. This sort of simple lack of understanding of the bill by the governor and his staff could be avoided if there were any attempt at all to communicate with either the author or sponsor of the bill prior to simply notifying us of a veto of a bill he clearly does not understand.”

NOTES: HB 2087 was analyzed in Part Two of the April 11 *Daily Floor Report*.

Establishing a pilot program to repay student loans for certain correctional officers

HB 2103 by Kolkhorst (Ogden)

DIGEST: HB 2103 would have established a pilot program, administered by the Texas Higher Education Coordinating Board (THECB), to provide assistance in the repayment of student loans for certain correctional officers who graduated with a baccalaureate degree from Sam Houston State University. The repayment assistance could have been used to repay any part of a student loan for tuition and fees for junior-level or senior-level courses taken in the baccalaureate degree program. In order to be eligible, correctional officers enrolled at the university would have to have been employed full-time as a correctional officer, been a Texas resident, needed financial aid, maintained good academic standing, and agreed to work at least one year as a full-time officer no later than the second anniversary of their graduation.

The loan repayment could not have exceeded the cost of tuition and fees required to enroll in 30 semester credit hours of junior-level or senior-level coursework. The loans would have been paid from a trust fund established outside the treasury but held in trust by the comptroller. Interest and income from the assets of the fund would have been used for the repayment of loans. Gifts, grants, and state appropriations could have been used to fund the program. The THECB could have used up to 2.5 percent of the money to cover the costs of administering the program. The pilot program would have expired after the 2013-14 academic year.

GOVERNOR'S REASON FOR VETO:

“House Bill No. 2103 would provide student loan repayment assistance for correctional officers who take junior- and senior-level courses at Sam Houston State University and fulfill certain other requirements.

“Although correctional officers are needed across the state, this bill would limit them to attending only one specified university to achieve the intended benefit.

“Furthermore, the state currently funds 19 financial aid programs; five of these are major financial aid programs and the other 14 target small groups of students. If the legislature funds the five major programs adequately, as I set forth in my 2008-09 budget proposal, then we should not need other programs. It is more cost effective for the Higher Education Coordinating Board and the institutions to administer a few large programs rather than many small programs.”

RESPONSE: Rep. Lois Kolkhorst, the bill’s author, said: “As a longtime advocate for employees of the Texas Department of Criminal Justice (TDCJ), and someone who represents thousands of prison employee families, I am disappointed in the veto of HB 2103. Modeled after the popular federal ‘G.I.’ bill, this legislation would have been a strong recruitment tool that would have decreased the shortage of correctional officers needed in our state. By offering tuition reimbursement in exchange for a commitment to work in the state prison system for a set number of years, the bill was widely supported by both labor and management ranks within TDCJ, and would have

produced a personal benefit to the individuals enrolled, and a positive impact to the corrections institution. Perhaps most importantly, the taxpayer would have benefited due to the lower attrition rate for correctional officers.

“Contrary to the governor’s reason for the veto, in which he voiced concerns that this bill would limit [correctional officers] to attending only one specified university, the fact remains that this bill clearly was intended to be a ‘pilot project’ and hence logically would need to be offered at one university first, before being expanded statewide at a later date. The veto not only ignored this obvious fact, but also remained deaf to the bipartisan support that the bill received in the House Corrections Committee and the Senate Higher Education Committee as well as the unanimous approval of both the entire House and Senate.

“By rejecting this powerful new recruitment and retention tool, the governor’s veto further accelerates and increases the problems experienced with attracting individuals to work within the state’s correctional units. More than a financial aid program, this bill would have been a benefit to taxpayers, a badly needed boost to the morale within our prison units, and an important tool for individuals to better themselves through higher education.”

Sen. Steve Ogden, the Senate sponsor, had no comment on the veto.

NOTES:

HB 2103 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Authorizing progressive bingo games with prizes up to \$2,500

HB 2265 by Haggerty (Averitt)

DIGEST: HB 2265 would have authorized progressive bingo games and allowed prizes for these games to exceed the current \$750 prize limit for single bingo games. A progressive bingo game would have been a game in which the prize increased over successive bingo occasions, which are a series of games, until a player won.

The prize in a progressive bingo game would have been called a “jackpot prize,” and prizes for games in which no player won the jackpot would have been called “consolation prizes.” Jackpot prizes could not have been more than \$2,500 for a single progressive bingo game, and consolation prizes could not have been more than \$250. Jackpot and consolation prizes would not have counted toward the limit on the aggregate value of prizes that are limited for a bingo occasion. Only one progressive bingo game could have been offered during each bingo occasion.

**GOVERNOR’S
REASON FOR
VETO:**

“House Bill No. 2265 would authorize progressive bingo, in which the jackpot prize can grow to several times the currently allowed level. This is a significant departure from existing legal charitable bingo games.

“The bill would allow a progressive bingo jackpot to grow to \$2,500, compared to the current maximum \$750. The progressive prize would not count against the current cap on total prizes, resulting in a \$10,000 cap on prizes for the evening. This is not in keeping with the nature of charitable bingo and threatens to cost the charities more in prize payouts than they will gain in revenue from players.

“Progressive bingo represents an expansion of gambling beyond anything contemplated when Texas allowed neighborhood charitable bingo halls.”

RESPONSE: Neither Rep. Pat Haggerty, the bill’s author, nor Sen. Kip Averitt, the Senate sponsor, had a comment on the veto.

NOTES: HB 2265 was analyzed in Part Two of the April 25 *Daily Floor Report*.

Health benefits for Corpus Christi Regional Transportation Authority board members

HB 2622 by Ortiz (Hinojosa)

DIGEST: HB 2622 would have allowed a board member of Corpus Christi Regional Transportation Authority to participate in any health or other insurance benefit program offered to an employee of the authority.

**GOVERNOR'S
REASON FOR
VETO:**

“I am vetoing House Bill No. 2622 at the author’s request. The bill would extend employee health insurance benefits to board members of the Corpus Christi Regional Transportation Authority (CCRTA); however the CCRTA board has recently withdrawn its support of the bill.”

RESPONSE:

Rep. Solomon Ortiz, Jr., the bill’s author, said: “I filed this legislation on behalf of the Corpus Christi Regional Transportation Authority (CCRTA), based on the unanimous support of the organization’s Board of Directors. While RTA board members in other cities received compensation, CCRTA board members received nothing. However, instead of a cash benefit, the board asked for the option of participating in the employee health insurance plan. They explained that this would help them better understand their employee’s health insurance needs and issues, which would translate into the board making more informed policy decisions regarding insurance benefits for the organization – decisions that would save the CCRTA money in the long run. Additionally, insurance benefits would help diversify the board and attract board members who actually use public transportation.

“However, the CCRTA has since decided to withdraw its support for the measure, deciding that any benefits from the bill were outweighed by the controversy it generated. Many of my constituents and community leaders have also told me they don’t think the bill is a good idea. When my constituents speak, I listen. I thank the governor for vetoing this bill at my request.”

Sen. Juan Hinojosa, the Senate sponsor, said: “If we want to attract qualified people to serve on important boards and commissions, such as the CCRTA, we must offer those people a per diem or some other reasonable compensation for their time serving the community. Otherwise, only the wealthy will be able to afford to serve. Ensuring that diverse views are represented is important to me. I believe that we all benefit when people from diverse backgrounds have the opportunity to serve because the process by which public policy is developed is more open and more able to address the needs of the entire community.”

NOTES: HB 2622 was analyzed in Part Three of the May 8 *Daily Floor Report*.

Stipends for teachers with national board certification

HB 2646 by Rose (Watson)

DIGEST: HB 2646 would have allowed school districts to use the discretionary portion of the Educator Excellence Awards Program to provide stipends to classroom teachers who had obtained national board certification through the National Board for Professional Teaching Standards.

**GOVERNOR'S
REASON FOR
VETO:**

“The legislature appropriated \$148 million to the Educator Excellence Awards Program to reward teachers who improve student performance. The program requires that school districts use at least 60 percent of the funds to directly reward classroom teachers who effectively improve student performance. The remaining funds must be used only for certain purposes, including providing stipends to effective mentors and to teachers with proven records of improving student performance assigned to campuses having difficulty retaining teachers. House Bill No. 2646 would add to the list of allowable uses for these funds by amending the program to allow districts to provide stipends to classroom teachers who have obtained certification through the National Board for Professional Teaching Standards (NBPTS).

“By allowing stipends only for NBPTS certification, House Bill No. 2646 essentially is a vendor-specific bill that would put NBPTS at a distinct advantage over competing certification programs, including the American Board for Certification of Teacher Excellence, which is currently under pilot and may soon be available in Texas. There is no reason to preference NBPTS certification over other worthwhile programs that recognize teachers who consistently improve student performance.

“In addition, the state’s significant investment in teacher incentives should be used toward fulfilling our goal of raising student achievement through supporting teacher participation in programs proven to have a real impact on teacher effectiveness.”

RESPONSE: Rep. Patrick Rose, the bill’s author, said: “The No Child Left Behind Act requires that every classroom be taught by a highly qualified teacher. According to the Southern Regional Education Board, one indicator of progress in this area is when licensure and certification focus on performance and lead to an increase in the number of teachers with content knowledge and proven teaching skills. One measure of this is the number of teachers who have obtained national certification through the NBPTS. Now in its 20th year, the NBPTS has set rigorous standards for teachers and developed a voluntary national certification system that recognizes, rewards, and helps retain highly accomplished teachers.

“Nationwide, 55,000 teachers have achieved this status, and the number is expected to grow with a trend of investment in national board certification by an increasing number of state governments. As of January 2007, only 315 of these teachers were working in Texas, ranking us 25th in the nation largely due to a lack of investment by our state. Any progress must be attributed to the efforts of districts like Austin ISD who have made the decision to offer locally funded financial incentives.

“By investing money in providing stipends of up to \$3,000 per year to national board certified teachers (NBCTs), Austin ISD has been able to increase their number of NBCTs fivefold from 2005 to 2006 and has employed more NBCTs than any other district in the state for the last five years – an investment that they believe has enabled them to retain their best teachers at a much higher rate than the state average.

“Dr. Pat Forgione, superintendent of Austin ISD, testified before the House Committee on Public Education that ‘having National Board Certified Teachers in our schools raises the teaching and learning capacity of those campuses.’ He further testified that ‘we at Austin ISD have honored these teachers and given them financial incentives to continue teaching in our schools. State funding would allow us and other districts across the state, to continue to support teachers in a way that has shown to be successful.’

“Over 100 studies that have examined national board certification find that NBCTs make a significantly measurable impact on teacher performance, student learning, engagement, and activity. A 2005 nationwide study by the University of Washington found that those who hold this certification are having a greater effect on student progress than those without, particularly among low-income students in the early grades, scoring seven to 15 points higher on year-end tests than students of non-NBCTs.

“Although NBCTs represent only one to two percent of the nation’s teaching population, they receive many of the top teaching awards. NBCTs represent 20 percent of the 2006 State Teachers of the Year and three of the last six National Teachers of the Year. Forty percent of the honorees in the National Teachers Hall of Fame are nationally board certified as well as 35 percent of the 2005 recipients of the Presidential Awards for Excellence in Mathematics and Science Teaching.

“Other programs, such as the American Board for Certification of Teaching Excellence (ABCTE), founded in 2001, are primarily focused on certifying individuals to become teachers upon leaving another profession. In Texas, ABCTE’s teacher certification is currently approved only for those seeking to be private or charter school teachers.

“The ABCTE, cited by the governor as a ‘competing certification program,’ does not offer an enhanced credentialing program comparable to NBPTS. The ABCTE is currently developing its Master Teacher certification program, and it is presently being piloted among 37 individual teachers, largely in Florida. It is important to note that this is a state that recently invested \$87 million in fostering national board certification, paying for 90 percent of the certification fee, and offering a 10 percent salary increase for the life of the certificate.

“Just as school districts may presently decide locally to use funds to provide stipends for NBCTs, they may also make the decision to provide stipends to teachers certified through the ABCTE, should that become a recognized path to teacher certification in Texas. HB 2646 would in no way prohibit a school district from choosing to recognize and reward teachers participating in other programs that they have determined to be

beneficial. I believe, however, that if we are to put tax dollars to use in support of a program, it should be one that has longstanding, demonstrable effects on student achievement.

“The stated purpose of the Governor’s Educator Excellence Award Program is to provide awards to educators who have demonstrated a positive impact on student achievement and who have contributed to campus success. National board certification is a proven measure of accomplishment for our very best teachers. NBCTs have been shown to improve student achievement and are leaders on their campuses. HB 2646 would have allowed school districts across the state to reward these extraordinary individuals with funds designed for this very purpose.”

Sen. Kirk Watson, the Senate sponsor, had no comment on the veto.

NOTES:

HB 2646 was digested in Part Five of the May 7 *Daily Floor Report*.

Legislative study of future electric generation and environmental effects

HB 2713 by Bonnen (Averitt)

DIGEST: HB 2713 would have created a legislative interim study committee to develop a long-term state energy plan, including a study of the state’s need for electricity generation capacity and the environmental effects of existing and potential electric generating facilities. The bill also would have directed the Public Utility Commission (PUC) to conduct a study on the potential of electric energy storage devices for use in transmission and distribution systems. The bill further would have allowed the PUC to authorize an electric utility to operate demonstration projects capable of energy storage.

**GOVERNOR’S
REASON FOR
VETO:**

“While I commend the legislature’s efforts to study the state’s demand for electric generation capacity for the next 50 years, the legislature needs no additional statutory authority to conduct such studies.

“House Bill No. 2713 proposes legislative review of existing generation facilities, which would be duplicative. The Texas Commission on Environmental Quality already reviews existing generation facilities to ensure they meet the environmental quality standards set forth in state law. The Speaker and Lieutenant Governor can independently assign interim studies to their standing committees if they so chose.”

RESPONSE: Neither Rep. Dennis Bonnen, the bill’s author, nor Sen. Kip Averitt, the Senate sponsor, had a comment on the veto.

NOTES: HB 2713 was digested in Part Two of the April 25 *Daily Floor Report*.

Authorizing and requiring certain electronic monitoring technology in TDCJ

HB 2990 by Madden (Seliger)

DIGEST: HB 2990 would have authorized the Texas Department of Criminal Justice (TDCJ) to retrofit current correctional facilities to use electronic monitoring and tracking systems for all inmates, employees, contractors, vendors, and visitors granted access to areas in which only employees normally go. Correctional facilities constructed on or after September 1, 2007, would have had to be built to use such a system. The bill would not have applied to jails owned or operated by cities.

If a facility had been designed or retrofitted to use the monitoring, TDCJ would have had to require that inmates, employees, contractors, vendors, and certain visitors wear identification transmitters while at the facility to track their location in real time. The tracking system would have had to alert a monitoring center when certain criteria, including unauthorized entrances and exits, were violated.

GOVERNOR'S REASON FOR VETO:

“House Bill No. 2990 directs the Texas Department of Criminal Justice (TDCJ) to include an electronic monitoring and tracking system to monitor the physical location and safety of inmates, employees, third-party vendors, and visitors in any correctional facility designed and built after September 1, 2007.

“While I believe that an electronic monitoring and tracking system has merit, I do not believe it should be required by law, especially when funds were not specifically appropriated as part of the bond funds that the TDCJ may be able to utilize for prison construction, if approved by the voters.

“A better approach is to have the TDCJ evaluate how an electronic monitoring and tracking system might improve its operations and safety as part of the construction design process. I direct the Texas Board of Criminal Justice to ensure that this evaluation occurs.”

RESPONSE: Rep. Jerry Madden, the bill’s author, said: “The purpose of HB 2990 was to move TDCJ forward in the use of technology. It is often the job of the Legislature to mandate certain concepts that will serve to nudge an agency into a new direction. The justification for this legislation was based on the fact that in the past, TDCJ has not shown an inclination to embrace forward thinking cost saving measures. Therefore, I felt this legislation was necessary to encourage a cultural change of thinking that instead emphasizes efficiencies and accountability.

“I appreciate your decision to direct the Texas Board of Criminal Justice to evaluate how an electronic monitoring and tracking system might improve prison operation and safety. I believe that while the study you require TDCJ to do is a step in the right direction, it is not nearly as visionary as other recommendations you have made this session. I know that we share forward thinking visions in other policy areas, and I believe that signing HB 2990 would have demonstrated forward thinking in

the criminal justice arena too. We should use technology to its fullest in all areas of government, and I hope that you will join with me in pursuit of better more cost efficient management techniques in the future.

“I intend to have the House Committee on Corrections look at this as an interim study. I plan to take recommendations from the TDCJ study and recommendations from the Corrections Committee interim study to work with your staff as we implement the good suggestions of these groups next session.”

Sen. Kel Seliger, the Senate sponsor, was unavailable for comment.

NOTES: HB 2990 was analyzed in Part One of the May 8 *Daily Floor Report*.

Eliminating automatic expiration of street maintenance sales-and-use tax

HB 3084 by Phillips (Deuell)

DIGEST: HB 3084 would have eliminated the current four-year automatic expiration for street maintenance sales-and-use taxes and instead would have allowed a municipality's governing body or at least 5 percent of its registered voters to call an election to abolish the tax. A municipality currently may impose a one-quarter or one-eighth of one cent sales-and-use tax for the maintenance and repair of existing streets, excluding county, state, and federal roads, as long as the total local sales-and-use tax rate does not exceed 2 percent. The tax automatically expires in four years unless reauthorized by the voters.

**GOVERNOR'S
REASON FOR
VETO:**

“Currently, the Street Maintenance Sales Tax adopted by a municipality must be reauthorized every four years by voters. House Bill No. 3084 would overturn this important taxpayer protection by allowing the tax to remain in effect until the municipality requests a public vote, or five percent of registered voters petition for an election.

“By making the Street Maintenance Sales Tax permanent, House Bill No. 3084 shifts the balance of power away from those being taxed to the government. The burden of justifying whether a tax should exist should fall on government, not the governed.

“Additionally, the percentage of registered voters required to initiate an election is too high. The 5 percent threshold would merely serve as an additional roadblock to taxpayer participation in their government.”

RESPONSE: Neither Rep. Larry Phillips, the bill's author, nor Sen. Robert Deuell, the Senate sponsor, had a comment on the veto.

NOTES: HB 3084 was analyzed in Part One of the April 12 *Daily Floor Report*.

State basic supervision funding computation for local probation departments

HB 3200 by Madden (Whitmire)

DIGEST: HB 3200 would have altered the computations for determining state basic supervision funding for local probation departments for felony defendants placed on probation. Instead of having the per capita funding for felons based on those directly supervised by local probation departments, funding would have been based on each felony defendant placed on probation and on each felony defendant participating in pretrial programs.

The Criminal Justice Assistance Division (CJAD) of the Texas Department of Criminal Justice (TDCJ) would have been required annually to establish a per capita funding formula that included:

- higher per capita rates for felony probationers who are serving the early years of their probation terms than for those who are serving the end of their terms;
- penalties in per capita funding for each felony probationer whose probation is revoked due to a technical violation of probation; and
- awards of per capita funding for each felony defendant who was discharged due to an early termination of probation.

The TDCJ board would have been authorized to adopt a policy limiting the percentage of benefit or loss that a department could realize under the new formula.

GOVERNOR'S REASON FOR VETO:

“House Bill No. 3200 would revise the funding formula that the Texas Department of Criminal Justice uses to fund community supervision and correction (probation) departments. This bill is problematic because the revised funding formula provides penalties for each felony defendant whose community supervision is revoked due to a ‘technical violation.’ Yet, there is no statutory definition of what constitutes a ‘technical violation.’ Just as important, there is no guidance in the bill as to how much of a funding penalty should be applied for these technical violations. Thus, we risk creating a system that has perverse financial incentives which undermine the purpose of probation itself.

“I encourage both the Legislature and the Board of Criminal Justice to continue looking at ways we can improve the probation funding formula.”

RESPONSE: Rep. Jerry Madden, the bill’s author, said: “HB 3200 was developed over the last two years in close cooperation with the Texas Department of Criminal Justice-CJAD, the Texas Probation Association, and the Texas Public Policy Foundation, and several other interested groups and individuals. As Chairman of the House Committee on Corrections, I am particularly interested in reducing the large number of probation revocations that are causing our prison numbers to swell.

“HB 3200 was intended to provide additional money and support to probation departments while also providing a structure that would decrease the number of persons on probation as well as the number of probationers sent to our state prisons. I spoke with many probation officials throughout the interim regarding my ideas of frontloading funding formulas and providing incentives and disincentives for department performance. This strategy, laid out in HB 3200, was widely accepted across the state.

“In your veto proclamation, you mention that there is no statutory definition of what constitutes a ‘technical violation.’ This is true, but not a sufficient reason to veto this bill since ‘technical violation’ is a well understood term in the criminal justice and probation fields. It is a term that has been used for many years, and thousands of probationers and parolees are sent to TDCJ for technical violations every year. If the term is standard enough to be used to take away people’s liberty by incarcerating them in our prisons, it is certainly well enough defined for use in our probation formula funding.

“My office worked with your staff this session to address prison overcrowding and probation reform. I was surprised, and continue to be disappointed in your decision to veto this very important bill. However, I look forward to working with you and your staff in the future so that we can develop a similar probation funding mechanism that will benefit Texas probation departments, TDCJ, and the citizens on this state.”

Sen. John Whitmire, the Senate sponsor, had no comment.

NOTES: HB 3200 was analyzed in Part Two of the May 4 *Daily Floor Report*.

Allowing the recovery of future malpractice-related damages

HB 3281 by P. King (Duncan)

DIGEST: HB 3281 would have specified that the limitation on damages for recovery of medical or health care expenses paid or incurred would have applied only to health care liability claims. The limitation would not have applied to future medical or health care expenses.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 3281 would reverse Texas’ sweeping lawsuit reforms passed in 2003 that reasonably limited the amount of medical bills a plaintiff could recover to the amount actually paid or incurred by the individual or their insurer.

“This bill would permit an individual in a personal injury lawsuit (other than a medical malpractice claim) to recover more money for medical expenses than actually was or will be paid. This would be done by allowing a person to submit bills that are higher than those actually paid to health care providers. For example, if this bill became law, an individual who was billed \$20,000 by a hospital, but whose insurance company negotiated the bill down to an actual amount paid of \$12,000, could still submit the original \$20,000 bill to the jury as if their insurance company actually paid that amount. This would deceive the jury as to the true amount of actual medical damages.

“Our civil justice system holds a defendant accountable for economic damages caused, including medical bills. A person should not be allowed to recover, and a defendant should not be required to pay, an inflated amount of actual medical costs. If a defendant has caused damage in addition to medical expenses, those damages should be addressed and recovered under the rules of our civil justice system, rather than inflating medical bills to cover them.

“Proponents of this bill argue it would reverse the ‘collateral source’ rule, which prevents defendants from introducing evidence that an insurance company, rather than the individual, paid all or a portion of the medical bills. This is not true. Nothing in Section 41.0105 allows a defendant to introduce this evidence or hinders an individual’s ability to recover the amount of the medical bills paid by their insurance company.

“The purpose of damages in a civil lawsuit is to make an injured individual whole by reimbursing the actual amount they have been deprived by the defendant’s actions. It should not be used to artificially inflate the recovery amount by claiming economic damages that were never paid and never required to be paid.

“The bill contains a second provision, which correctly restates that Texas’ tort reform law does not prevent a person in a lawsuit from recovering damages for future medical bills caused by their injury. On its own, this provision would have been acceptable.”

RESPONSE: Rep. Phil King, the bill's author, said: "I'm disappointed that HB 3281 was vetoed. The 'paid or incurred' provision has the unintended effect of giving the liable wrongdoer the benefit of the health insurance premiums paid by the non-liable injured party. It also allows a non-insured injured party (one without health insurance) to recover fully for their injuries while limiting the recovery available to someone who has health insurance. This makes no sense."

Sen. Robert Duncan, the bill's sponsor, had no comment on the veto.

NOTES: HB 3281 was analyzed in Part Two of the May 7 *Daily Floor Report*.

Automatic payroll deduction of dues to sole bargaining agent for Houston police

HB 3352 by Woolley (Whitmire)

DIGEST: HB 3352 would have directed the city of Houston to deduct police employee group dues for a police employee group recognized as the sole bargaining agent via automatic payroll deduction from members of the employee group. Automatic payroll deduction for members of other police employee groups could have been authorized by agreement between the chief executive officer of the public employer and the recognized bargaining agent. HB 3352 also would have amended provisions establishing recourse for Houston police officers and fire fighters who were employed by departments with civil service agreements and who were facing disciplinary action.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 3352 would require automatic payroll deduction for the police employee group that has been recognized as the sole and exclusive bargaining agent under the ‘meet and confer’ process authorized in a municipality with a population of 1.5 million or more (City of Houston). Yet, the bill only permits automatic payroll deduction for members of other police employee groups by agreement between the chief executive officer of the municipality (mayor) and the recognized bargaining agent. This type of approval requirement appears to serve only the interests of the current bargaining agent and undermines the meet and confer process.”

RESPONSE: Rep. Beverly Woolley, the bill’s author, said: “I am disappointed that the governor chose to veto this bill which was based on current local practices of the city of Houston and the Houston Police Department. This bill with Senate amendments passed the House 140 to 0 and passed unanimously on the Senate’s Local and Consent Calendar. It is unfortunate that the governor did not agree with the consensus of the Legislature.”

Sen. John Whitmire, the Senate sponsor, had no comment on the veto.

NOTES: HB 3352 was analyzed in Part Two of the April 23 *Daily Floor Report*.

Prohibiting school buses from idling at a school or school event

HB 3457 by Hochberg (Zaffirini)

DIGEST: HB 3457 would have prohibited the driver of a school bus equipped with a diesel engine from idling the engine while parked at a school or school event. The bill would not have prohibited idling for the minimum time necessary to heat or cool the bus before departure or as necessary to accommodate the physical needs of a student receiving special education services.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill 3457 would prohibit buses from idling while parked on a school campus or at a school event under certain circumstances. I believe educators should be focusing on more pressing priorities, such as: teaching a standards-based curriculum; providing a classroom environment conducive to children with special needs; providing free lunch for students from low-income families; providing a safe learning environment; providing extra-curricular activities such as athletics, the arts and band; providing a bilingual education to more than 600,000 students who speak English as a second language; operating day and after-school programs, and; providing after-hour tutoring services. These are the core functions of our education system. If schools believe they should also regulate and enforce school bus idling policies, I think they should do so, not because it is mandated by the state, but because they have chosen to do so as a matter of policy decided on the local level.

“I am also concerned that schools would have a difficult time enforcing this law with regard to the provision prohibiting a school bus engine from idling for more than the *minimum time necessary to heat or cool the bus before departure.*”

RESPONSE: Rep. Scott Hochberg, the bill’s author, said: “The veto of this legislation makes no sense to me. Rarely do we have the opportunity to save taxpayers’ money and improve the health of our children at the same time. This bill would have done both.

“In his message, the governor lists his priorities for our schools, all of which are excellent priorities. That’s exactly why we need this legislation, and why it should not have been vetoed. We should be spending our education tax dollars on exactly those priorities that the governor lists, not wasting it on diesel fuel for buses that idle longer than necessary, sometimes for hours. I can’t look at that priority list and say that school districts should be allowed to waste even one penny by unnecessary idling.

“In the current budget, we are spending millions of state and local dollars to retrofit our school bus fleet to reduce the amount of toxic diesel fumes they emit (which I agree we should be doing). Turning off the engine when it does not need to be running eliminates 100 percent of the pollution that is generated during unnecessary idling, and costs nothing. In fact it saves money.

“As to the issue of local control, it seems strange to bring that up in this context when the governor recently signed a bill that will require school districts to have seat belts in school buses. Why is this a local control issue if that is not? Usually, the Texas

Association of School Boards can be counted on to point out where we are invading the realm of local control unnecessarily. But in this case, that association expressed support for this bill, as did every other organization that either testified or submitted a position.

“My office had much input from the governor’s staff on various legislation throughout the session. They brought constructive suggestions, and I thought we worked well with them. That’s particularly why it is a surprise that we never heard any concerns from the governor’s staff about this bill until we were notified of the veto. Had concerns been expressed, I’m confident that we could have found a way to craft this legislation to meet those concerns.”

Sen. Judith Zaffirini, the Senate sponsor, said: “It is unbelievable that Gov. Rick Perry vetoed HB 3457 by Rep. Scott Hochberg. State government is responsible for the safety of all students. This good bill was based on best practices that would have enhanced the health and safety of schoolchildren while they are in the state’s care.

“The tailpipe exhaust generated by diesel engines accumulates in and around school buses and poses a known health risk to children and bus drivers. Breathing air heavy with exhaust particulates can be dangerous even during a short time because these substances can enter the circulatory system and damage blood vessels. Children are more susceptible to this damage than adults. By limiting the amount of time a bus may idle, HB 3457 would have reduced these dangerous exhaust emissions.

“Teacher and parent groups, environmental organizations, and school administrators worked collectively to ensure that this bill would protect schoolchildren while saving school districts money and precluding health care costs. It is unfortunate that this important legislation will not be implemented statewide because it would have helped us provide the safest possible environment for Texas students.

“My prayer is that parents of schoolchildren who suffer the consequences of this veto will inform Gov. Perry. Perhaps he will be more sensitive and better informed when we introduce this legislation anew in 2009.”

NOTES:

HB 3457 passed the House on the Local, Consent and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Retirement benefits for certain state employees

HB 3609 by Talton (Ellis)

DIGEST: HB 3609 would have amended Employees Retirement System (ERS) requirements to allow a person who retired with more than 14 years of service credit and, after retirement, worked for the Legislature before January 1, 2007, to resume membership in ERS and receive credit for the period served after retirement. To receive credit, the person would have had to pay employee contributions, without interest, for the period of service after retirement.

The bill also would have allowed certain employees of the Legislature who met conditions specified in the bill to transfer the person's ERS service credit from the employee class to the elected class.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 3609 would entitle a select group of state employees to receive special retirement benefits which other state employees will not have the opportunity to receive. State law governing retirement benefits requires a state employee to work for a certain number of years while contributing to the pension trust fund in order to establish the requisite amount of service credit to receive retirement benefits. House Bill No. 3609 would allow a select few to receive increased benefits without meeting established state requirements.”

RESPONSE: Neither Rep. Robert Talton, the bill's author, nor Sen. Rodney Ellis, the Senate sponsor, had a comment on the veto

NOTES: HB 3609 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Extending the deadline for a political subdivision to change its general election date

HB 3619 by Raymond (Zaffirini)

DIGEST: HB 3619 would have given the governing body of a political subdivision other than a county until December 31, 2008, to change the date it holds its general election for officers to another authorized uniform election date.

GOVERNOR'S REASON FOR VETO:

“In 1993, the legislature enacted a statute requiring local political subdivisions to set a fixed date for their elections and stick to it, so voters would know each cycle when elections will be held. House Bill No. 3619 attempts to extend for the fifth time the deadline for political subdivisions, other than counties, to change the date on which the subdivision holds its general election for officers.

“In 1993, the legislature established a deadline of December 31, 1993, for setting election dates. The date was then pushed back to December 31, 1997 (by the 75th session), December 31, 1999 (by the 76th session), December 31, 2004 (by the 78th session), and December 31, 2005 (by the 79th session).

“House Bill No. 3619 would move the deadline again, to December 31, 2008.

“While some of the deadline extensions were necessary in sessions in which the legislature cut back the number of uniform election dates, we have now reached the point where the cities and other local subdivisions need to stop moving their election dates. Voters need to know when a political subdivision holds its elections.

“If Texas is serious about increasing turnout, the state must stop changing the time and place for elections, and set them permanently so voters will know when they can vote.”

RESPONSE: Rep. Richard Raymond, the bill’s author, had no comment on the veto.

Sen. Judith Zaffirini, the Senate sponsor, said: “Laredoans, especially city officials, share my disappointment that Gov. Rick Perry vetoed HB 3619 by Rep. Richard Raymond. Consistent with our recently amended charter, this legislation would have extended from December 31, 2005, to December 31, 2008, the deadline for which a local government, other than a county, may change its general election date. At the request of city of Laredo officials, I sponsored HB 3619 so the city could change its general election day to coincide with school district elections. According to city officials, this change would have increased voter turnout and lowered costs. What’s more, representatives from the High Plains Underground Water Conservation District No. 1 in Lubbock also requested this flexibility as a cost-saving measure. Although Gov. Perry stated wrongly that it would depress turnout, HB 3619 would have increased turnout for local elections and also saved taxpayer dollars.”

NOTES: HB 3619 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Attorney general study of the effects of international agreements and entities on state law

HB 3647 by Kolkhorst (Lucio)

DIGEST: HB 3647 would have required the attorney general to conduct a study to determine whether Texas law or the authority of the Texas Legislature was or could be restricted, preempted, or otherwise directly affected by any existing or proposed compact, agreement or other arrangement between the United States, Texas, or a state political subdivision and a foreign governmental entity. The attorney general also would have been required to study whether international organizations or foreign or international bodies could directly affect Texas law or the authority of the Legislature and whether any of these entities had attempted to directly affect the law or policy of Texas or any of the state's governmental bodies. In conducting the study, the attorney general would have had to consider specified international agreements and organizations.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 3647 would require the Office of the Attorney General (OAG) to study whether international laws or agreements can impact or preempt Texas law or the authority of the Texas Legislature. This legislation is objectionable for several reasons. The international laws and agreements under scrutiny are federal law. As the State of Texas, we live under the umbrella of federal law and intend for our state laws to comply with it. If we believe federal law impacts Texas in an undesirable way, we should work with Congress and the president to remedy those concerns. There is no need for the OAG to spend state resources and time deciphering whether federal law preempts state law when it is the objective of the State of Texas to act in accordance with these laws.”

RESPONSE:

Rep. Lois Kolkhorst, the bill's author, said: “Ironically, the veto proclamation for HB 3647 actually makes the case for why the bill is necessary. The governor's reason for the veto cites international agreements as being federal law. This is only partially true. While the state lives under the umbrella of federal law and must comply with state laws, the question remains to be answered as to whether federal agreements with international organizations also impact Texas law.

“In fact, the idea for HB 3647 originated after I attended a budget hearing and questioned the state attorney general after he testified that he was being asked to review a great deal of proposed immigration bills filed in the Texas Legislature to determine if they violated federal law or international agreement. For instance, if an international trade agreement such as NAFTA determines that a state law written to stem the trend of illegal immigration is seen as a barrier to free trade because it hinders the free flow of labor, does that agreement equal an actual federal law? If an unelected appointee of the United States signs an agreement with the World Court about the death penalty issue, does that federal agreement with an international organization then supersede state law?

“The governor's veto intentionally ignores these broader questions. As more international agreements are signed, if the intent of those agreements is to bypass the U.S. Congress and the voting public, then it will indeed be necessary to spend state

resources deciphering whether international agreements do preempt state law. While it is the objective of the state of Texas to act in accordance with federal laws, if unelected appointees within the federal government's various branches sign agreements with international organizations, the fact remains that there is no concrete legal determination today as to whether those agreements supersede Texas law. The report required in HB 3647 would be the first step in answering this question for all Texas citizens."

Sen. Eddie Lucio, the Senate sponsor, had no comment on the veto.

NOTES: HB 3647 was analyzed in Part Five of the May 7 *Daily Floor Report*.

Establishing a student outcomes pilot program by Alamo Community College

HB 3934 by McClendon (Van de Putte)

DIGEST: HB 3934 would have established a pilot program at Alamo Community College to collect and analyze statistical data regarding retention and graduation rates for higher education students at the college in order to identify successful learning methodologies that would ensure college success and higher graduation rates. The data would have been used to provide educators with information to identify the efficacy of instruction at Alamo Community College and examine the transition of students to four-year institutions and further the ongoing education excellence initiatives by the college.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill 3934 would authorize the Alamo Community College District to create a new special item, which funds a study to determine how well their students transition to four-year institutions. This is something that should already be occurring, within existing resources, because one of the preeminent missions of any two-year college is to prepare students for transfer to a four-year school.”

RESPONSE:

Rep. Ruth Jones McClendon, the bill’s author, said: “HB 3934 would have established a student outcomes pilot program by the Alamo Community College District (ACCD) to provide an overall picture of how well students transition from high school to community college and graduation from a university. There is national recognition that such an evaluation tool is needed.

“A chief reason for instituting this program was to carry out the initiative set forth during the 79th third special session under HB 1, being the design to align curricula and establish P-16 strategies for student longitudinal success. In fact, this 80R appropriation would have provided a program to serve as the analytical backbone and a statewide model for ‘Closing the Gaps.’

“In the last special session of the 79th Legislature, HB 1 called for more coordination in a K-16 educational system and directed the Texas Education Agency (TEA) and the Higher Education Coordinating Board (THECB) to coordinate their efforts in this regard. Here is how this pilot program of HB 3934 would have assisted with that directive:

- This project would have aligned with HB 1, sec. 28.008, ‘Advancement of College Readiness in Curriculum,’ which establishes vertical teams;
- It also would have aligned with sec. 39.0232, ‘Use of End-of-Course Assessment Instrument as Placement Instruments’; and
- It would have aligned with sec. 61.076, K-16, ‘College Readiness and Success Strategic Action Plan.’

“Currently, the TEA collects data regarding student performance and accountability. Separately, the THECB collects data regarding retention rates and graduation rates. The TEA system database contains information on student grades, class standing, TAKS scores, and other information. The THECB database has retention rates,

graduation rates, and other data. The ACCD quantitative study appropriation supporting HB 3934 would have provided a bridge for assembling meaningful data and an evaluation link between the separate sets of data gathered by the TEA and THECB.

- Although there are databases currently available at TEA for K-12 and at THECB as to student performance results, there is no system currently in place to bring the two systems together.
- This quantitative outcomes study authorized in HB 1 (80R) would have documented the transition from high school to college success with a mechanism for linking student results in high school and college.
- This \$500,000 appropriation in HB 1 (80R) would have carried through with the 79R and 79(3) plan of helping educators identify gaps in curriculum and align expectations between high school completion and entry into college and/or the workforce. Current legislation is based on accountability, whereas HB 3934 would have gone further. The results of this project would have helped solve the puzzle of why some students excel in high school academics but underperform in college admission exams and college classes.

“Commitments for participation and assistance with this project were in place from the University of Texas at San Antonio, Alamo Community Colleges, San Antonio Independent School District, the Texas Higher Education Coordinating Board, and Cal-PASS (the California State Pathways System).

“In conjunction with the Texas Higher Education Coordinating Board, the ACCD pilot study would have provided a system through which to:

- track students as they progress through their courses;
- develop faculty teams to measure progress, identify barriers to student progress and develop curricula strategies to overcome barriers; and
- create methods for statewide implementation to improve student graduation rates.

“In collaboration with Cal-PASS, this two-year ACCD pilot program would have provided a cost efficient means of enhancing the existing THECB tracking system and improving the benefits of that tracking system for the colleges and universities.

- This program would have provided a useful mechanism to bring systems together to document the transition from high school to college success by identifying gaps in curriculum and aligning expectations between high school completion and entry into college level work.
- This program would have helped public schools learn how well their students do as they transition from one educational system to another; it also would have helped faculty teams share and analyze data as students move through their educational continuum and identify intercollegiate strategies to improve student success.

- It would also have provided data to evaluate which current practices work to ensure student success as the student transitions from each level of education to the next, and the changes needed to meet the state’s goals for student success from pre-college years through university graduation.

“Other states, such as California and Florida, have established successful programs to allow for monitoring the transition of students as they move towards completion of an undergraduate degree. They have used these programs to identify issues and make recommendations to enhance their states’ gains in higher education. HB 3934 would have provided Texas with a pilot for helping our state accomplish similar successful outcomes experienced by educationally progressive states.”

Sen. Leticia Van de Putte, the Senate sponsor, was unavailable for comment.

NOTES:

HB 3934 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Establishing a pilot program to provide grant to Texas Association of Goodwills for job training

HB 4065 by Otto (Watson)

DIGEST: HB 4065 would have authorized the Texas Workforce Commission to establish a pilot program with the Texas Association of Goodwills to provide up to \$3 million in grants to workforce training centers for the construction of new facilities for job training and employment services.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 4065 would provide the Texas Association of Goodwills up to \$3 million in reimbursement for completed construction of new job training facilities; however the state budget gives an inconsistent \$1 million to this project.

“This type of project is added special-interest funding that will benefit only Texas Association of Goodwills, which has no true state oversight, nor is it accountable to Texas taxpayers. I support workforce training and the funds that were added to the budget for that purpose; however, the state should not be in the business of constructing facilities for non-state entities. It is also important to note that the state currently has 28 local workforce boards located throughout the state that have facilities that provide job training.”

RESPONSE: Rep. John Otto, the bill’s author, was unavailable for comment.

Sen. Kirk Watson, the Senate sponsor, had no comment.

NOTES: HB 4065 was analyzed in Part Two of the May 1 *Daily Floor Report*.

Amending the boundaries and the board of directors of the Harris County Improvement District Number 6

HB 4091 by Coleman (Ellis)

DIGEST: HB 4091 would have changed the membership of the board of directors of the Harris County Improvement District Number 6, increased the numbers of directors on the board from 11 to 13, altered the date at which board members' terms would expire, and amended the boundaries of the district.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 4091 seeks to amend the enabling statute creating the Harris County Improvement District No. 6, which is a municipal management district governed by Chapter 375, Local Government Code. The changes proposed by House Bill No. 4091 would add territory to the district, increase the district's board of directors from 11 to 13 members, and list seven new directors by name.

“Municipal management districts are intended to provide a means for municipalities to focus additional resources on specific areas or neighborhoods for improvements and revitalization. Currently, the law governing these districts applies concepts of local control under the Local Government Code. I support the use of management districts to promote and encourage employment, commerce, economic development and the public welfare.

“Under the Local Government Code, members of a district's board of directors are approved by the governing body of the municipality in which the district is located. However, House Bill No. 4091 would increase the number of directors serving on the board of the Harris County Improvement District No. 6, and specifically, would designate replacement board members and name new directors – all without the approval from the local governing body. Similarly, House Bill No. 4091 would expand the district's territory in a manner that does not allow input from the citizens and property owners of the annexed land being brought into the management district. I support the current method of a district annexing property subject to the approval of the local governing body and the safeguards that public input provides.

“House Bill No. 4091 would usurp municipal oversight that is critical to the proper functioning of these districts and the appointment of board members and approval of boundary changes is a vital part of the municipalities' oversight responsibility.”

RESPONSE: Rep. Garnet Coleman, the bill's author, said: “HB 4091 expanded Harris County Improvement District No. 6, also known as the East Montrose Management District, to include the entire Montrose area. It also expanded its board to update the statute and ensure that west Montrose businesses were properly represented.

“This management district was originally intended to provide services to the entire Montrose area, but there was local opposition and I decided that the district should be located on the east side of Montrose in House District 147, which I represent. In 2005, during the 79th Regular Session, Harris County Improvement District No. 6 was successfully created by HB 3518. This district has received widespread support, and the local opposition to expanding the district to the west has since been dissolved.

“In his reasoning for vetoing the bill, the governor contends that the legislative process somehow usurps power from the city of Houston and does not allow for public input. That is inaccurate. Before the management district could assess any businesses in the annexed area:

1. A written petition must be filed with the board from a majority of business owners who could be assessed, requesting the services and improvements to be paid for with the assessments.
2. Upon receipt of petitions, the district must send, by certified mail, to every property owner potentially subject to assessment a notice of a public hearing.
3. The district must then conduct a public hearing and hear testimony in favor or against the proposed improvements and assessments.
4. Finally, the district must obtain consent from the city council of the city of Houston of the inclusion of land into the district. Even with the passage of this bill, the municipality, local citizens and property owners must approve the annexation.

“There are two ways that a district may be expanded. The first is through a local process in which a majority of the landowners in the district must come to an agreement with the city and the district. The second is through a legislative process that changes the original statute and then goes through the local process described above. I chose to use the legislative process to expand the district, so that the statute would properly reflect the actual boundaries of the district.

“In his veto message, Gov. Perry mentioned that he supports the local process that a management district may use to annex land. However, the local process requires no more local input than the legislative process. Both processes require support by a majority of land owners and approval from the city. Also, HB 4091 provided the exact same input and local process as is used when creating a new management district. This process has been used to create every management district and has proven to allow for local input.

“Gov. Perry also argues that by expanding the board, HB 4091 again assumes a role that the city of Houston should have. I disagree with this assertion. Many of the members that were replaced were already on the board and had received approval from the city. HB 4091 just updated what the city had already done. The bill then expanded the board to ensure proper representation on the west side. Many board members already owned property on both sides of Montrose, so I only needed to add two members. No one opposed these additions; not the city nor local business. Furthermore, Gov. Perry failed to recognize that when a management district is created, the legislation names the initial board of directors and there is no city approval. The reason there needs to be city approval for naming new board members is because it is not feasible to have the Legislature change the statute every time a board member is added or resigns.

“HB 4091 was supported by local business and passed both the House and the Senate without opposition. Neither the city of Houston nor local citizens contacted my office with any opposition. This bill would have helped revitalize and improve the Montrose

area. By vetoing this bill, the governor has slowed the process by which Harris County Improvement District No. 6 may annex new land.

“Management districts have been effective throughout Houston and allow the local communities to hire additional police, who increase security and assist with graffiti abatement. These additional resources are above and beyond city and local services. As a result, there is an increased value of property and businesses in the area, helping increase business development for the community. I intend to file this bill next session with hopes that the governor will understand its purpose and the widespread support from the community for this expansion.”

Sen. Rodney Ellis, the Senate sponsor, had no comment on the veto.

NOTES:

HB 4091 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Amending boundaries and board of directors of Buffalo Bayou Management District

HB 4113 Cohen (Ellis)

DIGEST: HB 4113 would have changed the membership of the board of directors of the Buffalo Bayou Management District, decreased the number of directors on the board from 31 to nine, altered the date at which board members' terms would expire, increased the contract dollar amount under which competitive bidding would have been required, and amended the boundaries of the district.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 4113 seeks to amend the enabling statute creating the Buffalo Bayou Management District, which is a municipal management district governed by Chapter 375, Local Government Code. The changes proposed by House Bill No. 4113 would alter the boundaries of the district, reduce the district’s board of directors from 31 to nine members, and list seven new directors by name.

“Municipal management districts are intended to provide a means for municipalities to focus additional resources on specific areas or neighborhoods for improvements and revitalization. Currently, the law governing these districts applies concepts of local control under the Local Government Code. I support the use of management districts to promote and encourage employment, commerce, economic development and the public welfare.

“Under the Local Government Code, members of a district’s board of directors are approved by the governing body of the municipality in which the district is located. However, House Bill No. 4113 would decrease the number of directors serving on the board of the Buffalo Bayou Management District, and specifically, would designate replacement board members by name – all without the approval from the local governing body. Similarly, House Bill No. 4113 would expand the district’s territory in a manner that does not allow input from the citizens and property owners of the annexed land being brought into the management district. I support the current method of a district annexing property subject to the approval of the local governing body and the safeguards that public input provides.

“House Bill No. 4113 would usurp municipal oversight that is critical to the proper functioning of these districts and the appointment of board members and approval of boundary changes is a vital part of the municipalities’ oversight responsibility.”

RESPONSE: Rep. Ellen Cohen, the bill’s author, said: “HB 4113 reduced the Buffalo Bayou Management District created in the 78th Legislative Session and amended the membership of the board.

“The reasoning for the reduction in area and amended board was meant to focus the district’s efforts around improvements to the properties immediately bordering Buffalo Bayou. Those improvements would have been flood mitigation, mobility projects, landscaping, and security.

“In his reasoning for vetoing the bill, the governor contends that the legislative process somehow usurps power from the city of Houston and does not allow for public input. That is inaccurate. Before the management district could assess any businesses in the annexed area:

1. A written petition must be filed with the board from a majority of business owners who could be assessed, requesting the services and improvements to be paid for with the assessments.
2. Upon receipt of petitions, the district must send, by certified mail, to every property owner potentially subject to assessment a notice of a public hearing.
3. The district must then conduct a public hearing and hear testimony in favor or against the proposed improvements and assessments.
4. Finally, the district must obtain consent from the city council of the city of Houston of the inclusion of land into the district. Even with the passage of this bill, the municipality, local citizens and property owners must approve the annexation.

“In his claim that HB 4113 ‘usurps’ local government jurisdiction, our office would like to point toward the city of Houston’s support of the measure during the bill’s hearing in the Urban Affairs Committee. Being the only municipality with territory under the district’s amended borders, our office is left without a clear answer as to what municipality the governor would ask to seek approval.

“Gov. Perry also argues that by decreasing the membership of the board, HB 4113 again assumes a role that the city of Houston should have. I disagree with this assertion. The reasoning for decreasing membership reflects the change in area covered by the proposed boundary changes. As the amended membership shows, property owners within the amended boundaries are well represented on the board and again were supported by the city of Houston. It stands to reason that with strong support from the property owners and with many serving on the amended board, there was no opposition to this change.

“HB 4113 was supported by local business and passed both the House and the Senate without opposition. Our office was pleased to work with Sen. Ellis and the governor’s staff to accommodate their concerns. However, we are disappointed with Gov. Perry’s decision to veto the legislation as well as his statement explaining his reasoning. Given the work our office has done with local property owners and the city of Houston, I am confused as to the reasoning used by the Governor’s Office in vetoing this measure.”

Sen. Rodney Ellis, the Senate sponsor, had no comment on the veto.

NOTES:

HB 4113 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Amending the boundaries of the Greater Southeast Management District

HB 4123 by Miles (Ellis)

DIGEST: HB 4123 would have expanded the territory of the Greater Southeast Management District, a municipal management district in Harris County.

**GOVERNOR'S
REASON FOR
VETO:**

“House Bill No. 4123 seeks to amend the enabling statute creating the Greater Southeast Management District, which is a municipal management district governed by Chapter 375, Local Government Code. The changes proposed by House Bill No. 4123 would increase the territory included in the district at the time of creation in 2001.

“Municipal management districts are intended to provide a means for municipalities to focus additional resources on specific areas or neighborhoods for improvements and revitalization. Currently, the law governing these districts applies concepts of local control under the Local Government Code. I support the use of management districts to promote and encourage employment, commerce, economic development and the public welfare.

“Under the Local Government Code, additions of land to the district are subject to approval by the governing body of the municipality in which the district is located. House Bill No. 4123 would expand the district’s territory in a manner that does not allow input from the citizens and property owners of the annexed land being brought into the management district. I support the current method of a district annexing property subject to the approval of the local governing body and the safeguards that public input provides.

“House Bill No. 4123 would usurp municipal oversight that is critical to the proper functioning of these districts and the appointment of board members and approval of boundary changes is a vital part of the municipalities’ oversight responsibility.”

RESPONSE: Rep. Borris Miles, the bill’s author, was unavailable for comment.

Sen. Rodney Ellis, the Senate sponsor, had no comment.

NOTES: HB 4123 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Designating the blind salamander as the official state amphibian

HCR 30 by Bonnen (Jackson)

DIGEST: HCR 30 would have designated the blind salamander as the official amphibian of the state of Texas.

**GOVERNOR'S
REASON FOR
VETO:**

“The official designation of items and objects as much-loved objects of Texas should represent the entire state and not just one region or locality. This resolution designates an amphibian as the official State Amphibian of Texas that is found in only one Texas county. Such a small area does not adequately represent the State of Texas as a whole. Therefore, I am not signing House Concurrent Resolution No. 30 by Bonnen.”

RESPONSE: Neither Rep. Dennis Bonnen, the author of the concurrent resolution, nor Sen. Mike Jackson, the Senate sponsor, had a comment.

Resolution expressing commitment to “13th check” for ERS retirees

HCR 187 by McClendon (Duncan)

DIGEST: HCR 187 would have expressed the Legislature’s support for the issuance of a “13th check” to Employees Retirement System of Texas retirees by September 2007.

**GOVERNOR’S
REASON FOR
VETO:**

“House Concurrent Resolution 187 expresses commitment to state retirees and support for the Employees Retirement System (ERS) Board of Trustees to provide a supplemental check (13th check) to retirees. I join the legislature in expressing my sincere respect and commitment to retirees and employees of the state of Texas. However, HCR 187 clearly contains major inaccuracies.

“House Concurrent Resolution 187 states that the 76th Texas Legislature provided for a 13th check for retired state employees and that retirees are still waiting to receive the promised benefit. This is simply untrue. ERS retirees received a 13th check in 2001 as well as a cost of living increase in January of 2002. The state spent approximately \$1 billion on the cost of living increase, bringing all retirees up to the same buying level as the date they retired.

“The resolution suggests that the ERS trust fund is actuarially sound (funded in 31 years or less) and that ERS has received sufficient appropriations for the fund to remain sound – both of which are contrary to the actual status of the ERS. Therefore, it is not possible for ERS to issue a 13th check to retirees.

“Because of the inaccuracies in HCR 187, I disapprove of this concurrent resolution because it misleads retired state employees to believe they will get a 13th check in 2007.”

RESPONSE: Rep. Ruth Jones McLendon, the resolution’s author, said: “At the time HCR 187 was filed, it appeared that the state’s contribution level to the ERS retirement fund would be set at an appropriate level, near 6.94 percent, to ensure the actuarial soundness of the ERS fund and support the 13th check for eligible retired employees. As it turned out, the appropriation level in the final version of HB 1 supported only 6.45 percent as the state’s contribution, which was unfortunately not sufficient to accomplish either goal.”

Sen. Robert Duncan, the Senate sponsor, had no comment on the veto.

Use of TexasOnline to obtain business permits

SB 711 by Shapleigh (Solomons)

DIGEST: SB 711 would have required TexasOnline to include a consolidated business application portal through which businesses could apply and submit payment for original and renewal permits required by state agencies. The permits for which businesses could have applied on TexasOnline would have been determined by the Department of Information Resources in consultation with the Texas Economic Development and Tourism Office and any affected state agency.

**GOVERNOR'S
REASON FOR
VETO:**

“Senate Bill No. 711 requires the electronic infrastructure established by the Department of Information Resources (DIR) to include a consolidated business application portal through which a business may apply and submit payment for original or renewal permits online.

“Senate Bill No. 711 is unnecessary because the State of Texas has already accomplished the provisions set forth in the bill.”

RESPONSE: Neither Sen. Eliot Shapleigh, the bill’s author, nor Rep. Burt Solomons, the House sponsor, had a comment on the veto.

NOTES: SB 711 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Trans-Texas Corridor route selection

SB 718 by Ogden (Gattis)

DIGEST: SB 718 would have required the Texas Transportation Commission (TTC), to the extent possible, to select a route segment for the Trans-Texas Corridor that lies on the Texas Highway Trunk System, which is a 10,500-mile statewide network of secondary highways identified for upgrades from two- and four-lane roads to four-lane divided highways. If the TTC determined that it could not select that route, it would have had to file with each member of the Legislature within 10 days a written report with the reasons for the determination.

**GOVERNOR'S
REASON FOR
VETO:**

“Senate Bill No. 718 requires the Texas Department of Transportation, to the extent possible, to select a route for a segment of the Trans Texas Corridor that lies on the Texas Trunk System. This will likely compromise the environmental process required by the National Environmental Policy Act which requires the state to ‘rigorously explore and objectively evaluate all reasonable alternatives ... so that reviewers may evaluate their comparative merits.’ This bill undermines the integrity of the environmental study process and could cause the Federal Highway Administration to conclude the state did not complete a valid alternatives analysis because the legislature dictated a preferred route by state statute.”

RESPONSE: Neither Sen. Steve Ogden, the bill’s author, nor Rep. Dan Gattis, the House sponsor, had a comment on the veto.

NOTES: SB 718 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Exempting certain military dependents from exit-level TAKS requirement

SB 960 by Shapleigh (Haggerty)

DIGEST: SB 960 would have allowed a student who was a dependent of a person serving in the military and who transferred into a public school system in Texas after the student's sophomore year in high school to satisfy requirements for passing the exit-level TAKS test through satisfactory performance on one or more alternative nationally recognized norm-referenced assessment instruments. The Texas Education Agency would have established required performance levels for the alternative assessments.

**GOVERNOR'S
REASON FOR
VETO:**

“Senate Bill 960 would exempt dependents of military personnel from passing the exit-level Texas Assessment of Knowledge and Skills (TAKS) test if the students transfer into the Texas public school system after they complete their sophomore year in high school. Instead of taking the TAKS, the commissioner of education would determine appropriate performance levels on other nationally recognized norm-referenced assessment instruments in order to satisfy the graduation requirements and qualify for a Texas diploma.

“The strength of our accountability system is derived from having a common standard for all students. Allowing exemptions from this standard decreases the value of a Texas diploma. And I believe all students are capable of success.

“Instead of singling out a particular group of students, I am directing the Texas Education Agency to study the challenges faced by transfer students and propose viable options to address this problem to the 81st Legislature.”

RESPONSE: Neither Sen. Eliot Shapleigh, the bill's author, nor Rep. Pat Haggerty, the House sponsor, had a comment on the veto.

NOTES: SB 960 passed the House on the Local, Consent and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Establishing a method for assessing academic advising for higher education students

SB 1053 by Zaffirini (Aycock)

DIGEST: SB 1053 would have required the Texas Higher Education Coordinating Board to establish a method for assessing the quality and effectiveness of academic advising services at each higher education institution, using input from higher education representatives, academic advisors and other professionals. The assessment would have to have included the use of student surveys and identified objective, quantifiable measures for determining the quality and effectiveness of academic advising services.

**GOVERNOR'S
REASON FOR
VETO:**

“Senate Bill 1053 requires the Texas Higher Education Coordinating Board to develop a methodology to assess quality and effectiveness of higher education academic advising services to students. The bill is silent as to what is to be done with the assessment methodology once it is developed. The bill is an unfunded mandate and will distract the agency from higher priorities.”

RESPONSE:

Sen. Judith Zaffirini, the bill’s author, said: “Gov. Rick Perry was ill advised to veto SB 1053. Passed unanimously by the Legislature, the bill would have directed the Texas Higher Education Coordinating Board and relevant stakeholders to develop an instrument to assess the quality of academic advising. Because assessing academic advisors is a priority of the National Academic Advising Association and because many students and parents have expressed their frustration with academic advising, I filed SB 1053 as an important first step in ensuring that students succeed academically and are graduated timely, thus saving parents and the state millions of dollars. The bill would have helped us address the goals of Closing the Gaps by helping students receive better advice and by enhancing retention, persistence, and graduation rates.

“SB 1053 reflected continued and well-justified confidence in the Higher Education Coordinating Board, which would have conducted the study. Perhaps the governor vetoed the bill because his Business Council recommended the replacement of this board.”

Rep. Jimmie Don Aycock, the House sponsor, was unavailable for comment.

NOTES:

SB 1053 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Additional elements for the state’s master plan for higher education

SB 1234 by Zaffirini (Rose)

DIGEST:

SB 1234 would have amended the Texas Higher Education Coordinating Board’s higher education master plan – also known as *Closing the Gaps* – to ensure that higher education students were sufficiently prepared to meet the challenges associated with participation in the public affairs of Texas and in the global economy. The bill would have added 14 separate elements to the master plan, including but not limited to reexamination of the purposes, needs, and goals of higher education in Texas and consideration of methods for defining the roles and missions of higher education institutions in a way that was consistent with the state’s needs and goals. The amended plan would have called for consideration of more effective methods for funding higher education, establishing a coherent long-term student financial aid strategy that would have addressed financial need and achievement, and recommendations for strengthening collaboration between two-year and four-year institutions and between primary, secondary, and postsecondary institutions. Consideration would have been given to the state’s allocation of resources for medical education and the geographic distribution of those resources as well as the value of associating a medical school with a general academic teaching institution.

Additional elements included identification of incentives to promote seamless transitions between high schools, junior colleges and technical institutions, state colleges, and general academic teaching universities. Enrollment capacity at the University of Texas at Austin and Texas A&M University would have been considered, as well as the possibility of creating additional four-year flagship institutions and where to locate them while ensuring a diverse student body at those institutions. Consideration would have been given to adding new components to the TEXAS Grants and other financial aid programs, including addressing the needs of preschool, primary, and secondary school students. The effectiveness of individual college savings plans and prepaid tuition plans and whether or not such programs contribute to increased student achievement, readiness for higher education, enrollment rates, dropout prevention, student success, and reliance on student loans would have been added to the plan.

GOVERNOR’S REASON FOR VETO:

“Senate Bill 1234 would add 14 specific elements to the currently required 5-year higher education master plan prepared by the Texas Higher Education Coordinating Board (THECB).

“The bill is unnecessary and duplicative. THECB is currently authorized to include in its plan these or any other elements it deems necessary.

“The Governor’s Business Council’s House Concurrent Resolution No. 159 creates a joint select commission on higher education and global competitiveness to develop the long-term vision and step-by-step plan to attain specific goals. This commission should be allowed to complete its work before modifying the existing statutory planning requirements of THECB.”

RESPONSE: Sen. Judith Zaffirini, the bill’s author, said: “I am astounded that Gov. Rick Perry vetoed SB 1234. Passed unanimously by the Legislature, this omnibus bill would have redefined planning for higher education by requiring the Texas Higher Education Coordinating Board to redirect its higher education master plan to prepare students to participate effectively in the state’s public affairs and in the global economy. SB 1234 combines four bills that were priorities of legislators interested in greatly enhancing the state’s ability to foster an excellent higher education system. What’s more, the bill was filed at the request of the Commissioner of Higher Education and the Texas Higher Education Coordinating Board, which received \$2.6 million in private donations to carry out the provisions in SB 1234.

“In his veto statement the governor claims that the bill is ‘unnecessary and duplicative,’ then suggests that the provisions outlined in SB 1234 should be developed by the Governor’s Business Council’s Select Commission on Higher Education and Global Competitiveness. Why the governor would waste taxpayer dollars and scarce resources by circumventing his own appointees at the Texas Higher Education Coordinating Board by creating a new commission is beyond comprehension.

“SB 1234 would have advanced the state in achieving the goals of *Closing the Gaps* in an efficient and responsible manner and would have assisted the legislature in deciding how to allocate tax revenues judiciously. Its veto is a slap on the face of the Higher Education Coordinating Board.”

Rep. Patrick Rose, the House sponsor, had no comment on the veto.

NOTES: SB 1234 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

HCR 159 by Morrison, adopted by the 80th Legislature during its 2007 regular session and signed by governor, requests the governor, the lieutenant governor, and the speaker of the House to create a 15-member Select Commission on Higher Education and Global Competitiveness. The commission’s mission is to draft a Texas Compact to attain the goals of educating Texans to levels comparable to the highest performing competitor states and nations, achieving global recognition for Texas public higher education institutions, and serving the unique needs of the different regions of the state. The concurrent resolution lists several specific issue areas related to global competitiveness in educational attainment that the commission should examine.

Allowing Addison city charter to supersede local-option election on alcoholic beverage sales

SB 1735 by Shapiro (Jackson)

DIGEST: SB 1735 would have specified that the home-rule charter of the city of Addison, which restricts the sale of alcoholic beverages for off-premises consumption to a portion of the city, would have superseded any county or justice precinct local-option election determining the sale of alcoholic beverages for off-premises consumption within its jurisdiction, regardless of when the election was held.

**GOVERNOR'S
REASON FOR
VETO:**

“Senate Bill No. 1735 seeks to clarify the Town of Addison’s alcoholic beverage charter amendment, which limited alcohol sales for off premises consumption within the limits of the municipality.

“I am vetoing Senate Bill No. 1735 because a municipality’s wet/dry status should not affect the boundaries of a local option justice of the peace precinct election and vice versa, which this bill does.”

RESPONSE:

Sen. Florence Shapiro, the bill’s author, said: “I regret that SB 1735 was vetoed. This bill addressed the exact concerns the governor articulated in his veto. We worked diligently with both the governor’s staff and the city of Addison to ensure that all questions were answered. This bill clarifies any overlapping laws relating to the city’s wet/dry status by naming the city’s charter as the superseding document above any other local option election.”

Rep. Jim Jackson, the House sponsor, said: “I was disappointed to hear that the governor decided to veto SB 1735, especially since the Governor’s Office never contacted me about this bill before the governor decided to veto it. It is unfortunate that the governor decided to veto this bill, given that it accomplishes exactly what the governor said he vetoed it for, namely, ‘because a municipality’s wet/dry status should not affect the boundaries of a local option justice of the peace precinct election and vice versa.’ In Addison, there are many overlapping precincts and districts, and it is unclear in current law which one holds primacy. SB 1735 sought to clarify the current fuzzy laws by ensuring that the city of Addison’s charter would supersede any other local election in a precinct where a considerable number of people live outside of Addison’s city limits.”

NOTES:

SB 1735 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

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