HOUSE
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focus REPORT

July 22, 2009

Vetoes of Legislation

81st Legislature

Gov. Rick Perry vetoed 35 bills approved by the 81st Legislature during the 2009 regular legislative session. The vetoed bills included 20 House bills and 15 Senate bills. The governor also vetoed three concurrent resolutions.

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

A summary of the governor's line-item vetoes to SB 1 by Ogden, the general appropriations act for fiscal 2010-11, appears in the House Research Organization State Finance Report Number 81-4, *Texas Budget Highlights, Fiscal 2010-11*.

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Requiring student health centers to file claims with, and certain higher education institutions to offer or participate in, health plans

HB 103 by F. Brown (Patrick)

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DIGEST:

HB 103 would have required that student health centers at higher education institutions with enrollment of more than 20,000 file health benefit claims on behalf of students or other people entitled to receive services through the student health center with the health plans in which the students or other people were enrollees. The institutions could have had the claims filed by a contracted third-party billing service.

These higher education institutions would have been required to establish contracts with at least three of the largest health benefit plan issuers in the health services region. Under these contracts, the institutions' student health centers would have served as preferred providers under the issuers' preferred provider benefit plans or operated as in-network providers under the issuers' health maintenance organizations.

A general academic teaching institution with a total student enrollment of more than 20,000 students would have been required to offer to students, directly or through a university system of which the institution was a component, one or more health benefit plans. At least one health benefit plan offered by these four-year institutions would have been required to be a high-deductible health plan.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 103 amends current law relating to student health benefit plan provisions at public institutions of higher education and health benefit plan operations through student health centers (SHCs).

"The bill requires general academic teaching institutions with more than 20,000 enrolled students to offer one or more health benefit plans, at least one of which must be a high-deductible plan.

"House Bill No. 103 also requires these institutions to accept and process private health insurance at SHCs. SHCs must file insurance claims for covered individuals. The institutions may contract with a third-party billing service to provide assistance.

"While I appreciate the author's intent to increase efficiency in our universities' health care systems, House Bill No. 103 would likely increase health service costs for college students and their families without increasing the level of service or care. Currently, SHCs may file claims for students with private health insurance, but choose not to do so because of the high cost associated with filing claims with the large number of health plans that serve students. Since most SHCs do not have the administrative and technical capacity required to do insurance billing, SHCs would

need to increase staff or contract this service to a third-party administrator; either option would needlessly increase costs to students.

"SHCs are designed to provide limited basic care services to students at low cost. Combined with a mandatory fee and inexpensive office visits, SHCs have been effective in helping students with their basic medical needs.

"Delivering reasonable health care to students is important, but House Bill No. 103 would precipitate a significant departure from current practices at SHCs without appreciably improving student health or access to care. Before undertaking such a dramatic shift in the administration of these services, we owe it to students and their families to take a closer look at the overall impact. Therefore, I am recommending that the lieutenant governor and speaker of the House conduct an interim study to review this issue."

RESPONSE:

Rep. Fred Brown, the bill's author, said: "HB 103 represented a simple, common-sense solution to save millions in taxpayer funds without reducing services for the state's public university students.

"By billing private insurance, this legislation would have promoted a new system of fiscal solvency for the state's university health centers, while encouraging young people throughout Texas to make the responsible decision with regards to obtaining personal healthcare.

"I am deeply disappointed by Governor Perry's decision to veto this fiscally conservative legislation, which passed through both houses of the Legislature with near unanimous support."

Sen. Dan Patrick, the Senate sponsor, had no comment on the veto.

NOTES:

The HRO analysis of HB 103 appeared in Part Three of the May 8 *Daily Floor Report*.

DIGEST:

HB 130, with funds appropriated in the general appropriations act, would have directed the commissioner of education to establish a grant program for school districts and open-enrollment charter schools to implement a full-day prekindergarten program for a child at least 3 years old who:

- was unable to speak and comprehend the English language;
- was educationally disadvantaged;
- was homeless;
- was the child of an active duty member of the armed forces;
- was the child of a member of the armed forces who was injured or killed while serving on active duty; or
- ever had been in the conservatorship of the Department of Family and Protective Services.

Grants awarded to school districts. A school district or open-enrollment charter school would have applied to the commissioner of education, who would have awarded grants in the following priority:

- school districts that received grant funding for early childhood education in a lesser amount than the amount provided during the 2008-09 school year and demonstrated above-average student performance for the preceding three school years on the state assessment instruments to students in the 3rd grade; and
- school districts that provided services to eligible prekindergarten students and demonstrated above-average student performance for the preceding three school years on the state assessment instruments to students in the 3rd grade.

The commissioner would have determined the amount of grants awarded to school districts, and no grant could have exceeded $4 million annually. The grant would have provided an amount for each student in the program equal to whichever was greater: the amount a district would receive under the Foundation School Program (FSP) for an additional student in average daily attendance (ADA) on a half-day basis, or the statewide average amount a district would receive under the FSP for an additional student in ADA on a half-day basis. Grant funding would have been in addition to funding appropriated under the Foundation School Program. Grant funding would have been paid directly to a school district or open-enrollment charter school and could not have been used in any way that resembled a voucher program.

A school district participating in the grant program would have included in the district's Public Education Information Management System (PEIMS) report

student-level results of reading instruments administered at the kindergarten, first-grade, and second-grade levels. The commissioner would have adopted an alternative reporting method for districts that did not administer a reading instrument that provided data compatible with PEIMS reporting.

Enhanced quality. A district could not have enrolled more than 22 students in a class and would have maintained an average ratio in the program of not less than one certified teacher or teacher's aide for each 11 students. Each class would have had at least one certified teacher — an individual with a minimum of nine semester credit hours of college education courses emphasizing early childhood education. If a certified teacher was unavailable, a community provider contracting with a school district could have employed a teacher for the program who had a minimum of three years experience in early childhood education, who was certified as a Child Development Associate by the Council for Professional Recognition, and who was taking one or more college education courses that emphasized early childhood education. The bill would have required the community provider to employ a certified teacher by the third anniversary of the date the provider contracted with the district.

A school district would have selected and implemented a curriculum for the program that included the pre-kindergarten guidelines established by TEA and would have been subject to all statutes governing prekindergarten programs.

Students enrolled in full-day pre-kindergarten programs would have been required to participate in moderate or vigorous daily physical activity for at least 30 minutes throughout the school year. To the extent possible, a district would have ensured that a student enrolled in half-day prekindergarten participated in the same type and amount of physical activity as a student in a full-day pre-kindergarten program.

Community providers partnerships. The bill would have required a school district to use at least 20 percent of grant funds provided to contract with one or more eligible community providers. The amount of reimbursement provided by a school district to a community provider would have been negotiable between the district and the provider based on the services provided. The district would have reimbursed the community provider for each student for which the community provider supplied the school facilities, certified teachers, personnel, and supplies in an amount not less than the sum of the district's adjusted basic allotment multiplied by 1.0 and any additional funding received by the district for the student under Foundation School Program formulas.

This reimbursement would not have affected a community provider's eligibility to receive any other local, state, or federal funds to provide before-school, after-school, and summer child care.

Waivers. The commissioner could have waived the requirement to spend 20 percent of grant funds to contract with a community provider on an annual basis if a school district documented that:

- the area served by the district did not have a sufficient number of eligible community providers;
- after a good faith effort, the district did not receive any applications or other indications of interest in contracting with the district from eligible community providers; or
- after a good faith effort and for good cause, the district and one or more eligible community providers interested in contracting with the district were not able to reach an agreement.

The commissioner would have sent to the district and the affected community provider, if applicable, written notice granting or denying a request for a waiver no later than 30 days after the commissioner received the request.

Eligibility. To be eligible, a community provider would have been required to have been center-based and licensed by and in good standing with the Department of Family and Protective Services. An eligible community provider also would have been required to have been:

- certified through the school readiness certification system;
- a Texas Early Education Model Participant;
- a Texas Rising Star Provider with a three-star certification or higher; or
- accredited by a research-based, nationally recognized, and universally accessible accreditation system approved by TEA that required a developmentally appropriate curriculum that included math, science, social studies, literacy, and social and emotional components.

Contracts. Each contract would have been in writing, approved by the commissioner, and included several types of partnerships, such as:

- school districts leasing school facilities to or from a community provider;
- a school district employing a certified teacher for a prekindergarten class and a community provider supplying the school facilities and all other personnel and supplies; or

- a community provider supplying the school facilities, certified teachers, personnel, and supplies.

Discrimination prohibited. A community provider could not have denied enhanced pre-kindergarten services on the basis of a student's race, religion, sex, ethnicity, national origin, or disability.

Annual report. A school district operating an enhanced program would have provided an annual report to TEA no later than August 1 of each year. The report would have included the percentage of the grant funds used to contract with community providers and data components that illustrated acquisition of knowledge and skills consistent with the pre-kindergarten guidelines established by TEA.

TEA would have collected and maintained information reported by school districts regarding state assessments to students in the third grade, produced longitudinal student performance reports, and made the reports available and accessible to the general public.

Program evaluation. The Legislative Budget Board (LBB) would have conducted or contracted for an evaluation of the effectiveness of the enhanced program in promoting student achievement and school readiness. The LBB would have delivered an interim report to the Legislature containing the preliminary results no later than December 1, 2012. The LBB would have delivered the final report to the Legislature no later than December 1, 2016.

Duties of the commissioner of education. The commissioner would have required regional service centers to assist school districts in informing parents of pre-kindergarten options, identifying eligible community providers, and maintaining an updated list of eligible community providers. The commissioner would have required regional service centers to assist community providers in establishing contracts with school districts and to provide eligibility information to community providers not currently eligible. The commissioner would have encouraged regional education service centers and school districts to use locally available child care resources and referral services. The commissioner could not have required a district or recipient of a grant to participate in the school readiness certification system.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 130 would create a grant program to enable eligible school districts to implement or continue full-day pre-kindergarten programs. Eligibility would be limited to districts whose third grade students have scored above the state average

on the reading portion of the Texas Assessment of Knowledge and Skills (TAKS) for the past three years. Of those eligible districts, any previous recipients of pre-kindergarten grant funding from the Texas Education Agency (TEA) would receive funding priority.

"With limited state resources dedicated to pre-kindergarten, grant money should be directed to districts with the greatest academic need. State funding should also be directed to programs demonstrating the most efficiency, thereby benefiting the largest number of Texas students.

"Pursuant to my veto of House Bill No. 130 and approval of the state budget, the $25 million appropriated for House Bill No. 130 should be used to expand the number of students served by the existing grant program. As a result, TEA will be equipped to provide assistance to half-day pre-kindergarten programs in districts whose third graders have scored below the state average on the reading portion of TAKS for the past three years.

"Under the funding formula for the existing grant program, $25 million would serve more than 27,000 students over the next biennium, which is 21,000 students more than the estimated 6,800 students that would have been served under the bill's proposed program — or a 305 percent increase. Expanding our current grant program, rather than creating an additional pre-kindergarten program, will serve more students with greater needs."

RESPONSE:

Rep. Diane Patrick, the bill's author, said: "The Governor's last-minute veto of HB 130 strikes a major blow to our state's efforts to create a better educated workforce. The bill had overwhelming support from both chambers to increase standards and quality of full-day prekindergarten programs for our most at-risk currently-eligible young learners of our state: economically disadvantaged, homeless, limited-English proficient, foster children, and children of military families. The bill was also supported by school groups, private childcare providers, business leaders, local law enforcement officials, and many other individuals and organizations across the state.

"The Governor's new plan redirects the $25 million allocated for HB 130 to the existing Texas Education Agency Prekindergarten Early Start Grant, stating this would serve more students. The problem with this approach is that grants awarded through this program do not cover actual costs, leaving local school districts with the option of cutting programs or raising property taxes to have high quality programs in place.

"Unlike the governor's plan, HB 130 allocated money to cover the actual expenses of a high-quality pre-kindergarten program, placing the emphasis on quality rather than only quantity.

"Studies such as the one by the Texas A&M Bush School of Government and Public Service show that every $1 invested in high-quality prekindergarten programs yields a $3.50 return, making this program a significant economic driver for the future Texas economy.

"We worked closely with the governor's staff and the Commissioner of Education on this bill throughout the session, and with over two-thirds votes in favor of the legislation, clearly, the Governor's veto shows he is taking his position over the will of the overwhelming majority of the Legislators and the business community.

"Given the current economy, we can all agree that money should be spent in the most efficient manner and not wasted, so it is shocking that our governor vetoed a bill to ensure higher-quality, research-based prekindergarten programs for at-risk, especially our military children, around the state. It's disappointing and our children and taxpayers deserve better."

Sen. Judith Zaffirini, the Senate sponsor, said: "I am shocked and dismayed that Governor Rick Perry vetoed HB 130 by Representative Diane Patrick, which I sponsored in the Texas Senate and was the companion to my SB 21. This is a disappointment not only for the early childhood education community, but also for our entire public education system. As documented by national and statewide studies, providing our youngest learners with high-quality early childhood education gives them the very best opportunity to succeed academically, from kindergarten through graduation and beyond.

"While I am pleased that the $25 million appropriated for HB 130 will be allocated for the Early Start Grant program for pre-kindergarten administered by the Texas Education Agency, it is disheartening that the funds will not be used as the legislature intended for effective strategies supported by research. HB 130 would have provided funding directly to school districts for specific high-quality enhancements for pre-kindergarten programs, including class size limits, teacher-to-student ratios, highly qualified teachers, enhanced curriculum, and collaborative community partnerships.

"The governor was ill-advised to veto HB 130 on the basis that 'state funding should also be directed to programs demonstrating the most efficiency.' HB 130 addressed this precisely, as it would have prioritized funding for high-performing school districts that educate our at-risk four-year-olds effectively, including foster children,

children in poverty, homeless children, those with limited English skills, and children of military families.

"Our bill offered incentives for districts that prioritized high-quality pre-kindergarten and rewarded districts that invested locally to provide academic excellence, ideals that the governor previously supported.

"Most important, HB 130 emphasized full-day, high-quality programs. Although, as the governor claims, the $25 million will serve more students via the Early Start Grant, participating students will not be guaranteed a full-day program or the high-quality enhancements that were the hallmark of HB 130."

NOTES:

The HRO analysis of HB 130 appeared in Part Three of the May 4 *Daily Floor Report*.

Student loan repayment assistance for correctional officers, speech-language pathologists, audiologists, and math and science teachers

HB 518 by Kolkhorst (Van de Putte)

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DIGEST:

HB 518 would have created programs to provide student loan repayment assistance for certain correctional officers, speech-language pathologists and audiologists, and math and science teachers.

A pilot program for correctional officers would have been administered by the Texas Higher Education Coordinating Board (THECB). It would have provided student loan repayment assistance for certain correctional officers who graduated from Sam Houston State University in Huntsville or another university selected to participate in the program and who met certain requirements, including two years of service as a correctional officer. Repayments would have been paid from a trust fund that was funded with gifts, grants and state appropriations and could not have exceeded the cost to enroll in 30 semester credit hours of junior or senior-level coursework. The pilot program would have terminated after the 2015-16 academic year.

Speech-language pathologists and audiologists would have been required to have been employed full time or part time for at least one year by a public school or have been a faculty member of a communicative disorders program at a public or private university for one year to be eligible for student loan repayment assistance grants. Grants would have been allocated for each year of employment and would have been limited to five years. Grants could not have exceeded 20 percent of the pathologist's or audiologist's total principal student loan amount, capped at $30,000 over five years for a recipient holding a master's degree or $45,000 over five years for a recipient holding a doctoral degree. Funding for the repayment grants would have been appropriated to THECB for this purpose and would have included state appropriations, gifts, grants, and donations.

The bill also would have created the Texas Teach Corps Student Loan Repayment Assistance Program for undergraduate students who agreed to teach for four years in public schools that had shortages of teachers in math or science and met certain requirements. The bill would have created the Mathematics and Science Teacher Investment Fund, consisting of general revenue funds appropriated by the Legislature, gifts, grants, and other donations received for the fund, plus interest earnings. The bill would have capped the number of eligible persons who could be awarded loan repayment assistance in any one year. Subject to the availability of funds, an assistance payment would be $5,000 for one eligible person.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 518 would provide student loan repayment assistance for certain correctional officers, speech-language pathologists, audiologists, and math and science teachers.

"The state currently funds 18 financial aid programs, four of which are major programs and the other 14 of which target smaller groups of students. Rather than creating new programs, the state should focus on fully funding the four main programs to make financial aid available to more students. The 2010–2011 state budget includes significant increases in funding for these key financial aid programs, which will provide assistance to more students than ever before. It is also more cost effective for the Texas Higher Education Coordinating Board and the institutions of higher education to administer a few large programs rather than many small programs.

"Additionally, the state already provides loan repayment assistance for math and science teachers through the Teach for Texas Loan Repayment Assistance Program, so another program for math and science teachers is duplicative."

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 518. Modeled after the popular federal GI 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 institutions. Perhaps most importantly, the taxpayer would have benefitted due to the lower attrition rate for correctional officers.

"The veto remained deaf to the bipartisan support that the bill received in the House Corrections Committee and the Senate Finance Committee as well as the approval of the 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.

"This bill was also vetoed last session, and had been retooled to address many of the concerns cited in the original veto statement, specifically the view that the pilot program was too narrowly defined. HB 518 was broadened to be more than a pilot program at one university, and also included important new additional career targets

beyond correctional officers, such as speech pathologists, as well as math and science teachers. Furthermore, Governor Perry did tout his support this session for a tuition loan repayment program for rural physicians, so he is clearly not philosophically opposed to all such tuition reimbursement programs."

Sen. Leticia Van de Putte, the Senate sponsor, had no comment on the veto.

NOTES:

The HRO analysis of HB 518 appeared in Part Four of the May 8 *Daily Floor Report.*

Creating a television recycling program

HB 821 by Leibowitz (Watson)

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DIGEST:

HB 821 would have set up a program for the collection and recycling of television equipment for televisions sold or used by consumers in Texas. The Texas Commission on Environmental Quality (TCEQ) would have been required to adopt recycling standards based on the Electronics Recycling Operating Practices provided by the Institute of Scrap Recycling Industries or standards from a comparable nationally recognized organization.

Television manufacturers, retailers, and recyclers would have had to comply with certain requirements. For example, television manufacturers would have been required to pay a $2,500 annual fee and register with TCEQ. Registrations and renewals would have had to include contact information and a list of all brands a manufacturer used in this state, even if the manufacturer were not licensed or did not own a particular brand. Retailers would have been prohibited from selling TVs from manufacturers that had not registered with TCEQ.

Television manufacturers would have been required to submit an annual report to TCEQ detailing the weight or amount of television equipment sold and recycled in the preceding year and a recovery plan explaining whether a manufacturer intended to collect and recycle its market share of television equipment, individually or in partnership with other manufacturers, including collection methods that would allow a consumer to recycle without paying a separate fee at the time of recycling.

Recyclers also would have been required to register annually with TCEQ and submit a report detailing the total weight of TV equipment recycled in the preceding year. The bill would have allowed TCEQ to impose a fee for recycler registration.

The TCEQ and attorney general would have been authorized to take appropriate action against those who violated the rules of the recycling program.

GOVERNOR'S REASON FOR VETO:

"Although House Bill No. 821 attempts to make it easier for consumers to recycle old televisions, it does so at the expense of manufacturers, retailers and recyclers by imposing onerous new mandates, fees and regulations.

"House Bill No. 821 mandates that television manufacturers collect and recycle a quantity of televisions — regardless of the televisions' original manufacturers — to be determined annually by the Texas Commission on Environmental Quality. It would also hold manufacturers responsible for recycling old televisions on the basis of their market share of new television sales, not on the basis of their past

share of manufactured televisions. Additionally, the bill imposes new fees on both manufacturers and recyclers. These requirements would generate unfair results and stifle competition.

"The program established by this bill is significantly different from a program established by House Bill No. 2714 in the 80th Legislature for the recycling of computer equipment, which has been widely successful without distorting the marketplace. House Bill No. 2714 requires computer manufacturers to develop plans providing opportunities for consumers to easily return equipment to the manufacturer for recycling. Rather than mandating a program, it provides incentives to manufacturers for accepting equipment from other companies, and specifically prohibits imposing new fees on manufacturers, retailers and recyclers.

"Texas has repeatedly proven that wise incentives can accomplish environmental progress with far greater success than burdensome mandates, fees, regulations and extensive reporting requirements.

"Before mandating programs and regulations that entail new costs to the state, consumers and Texas employers, lawmakers should look to encouraging voluntary recycling programs like those being implemented by electronics retailers across the state. I recommend that the 82nd Legislature reconsider this issue to enhance the program for television recycling without hindering competitiveness and imposing burdensome fees and regulations."

RESPONSE:

Rep. David Leibowitz, the bill's author, said: "More Texas televisions will end up in landfills and threaten the health and safety of our citizens because of Governor Rick Perry's veto of HB 821. It will also mean that local governments and charities will have to continue to divert money from providing essential services to pay for the costs of television recycling. This bill was the result of a consensus between industry stakeholders, local government officials, non-profit organizations, environmental advocates and a bi-partisan group of lawmakers and it is unfortunate that the Governor's Office, which said they were fine with the bill during session, decided after the legislative session ended that they disagreed with the bill.

"Estimates already indicate that as many as eight million TVs sit in storage in Texas and that as many as three million could make their way to landfills following the DTV switch that occurred on June 12. Old televisions typically contain between four and eight pounds of lead, most new flat screens contain mercury, and almost all electronics are coated with brominated fire retardants and other chemicals that can cause harm when landfilled or incinerated. Because of the veto, many of these TVs will end up in landfills instead of being responsibly recycled. And because many old

Texas landfills are grandfathered from modern safety standards, it is likely that these chemicals will be released into the environment.

"I disagree with the governor's characterization of HB 821 as being very different from the computer takeback law passed in 2007 and his voicing concerns about "burdensome" requirements and fees imposed on manufacturers. In fact, HB 821 was based on the computer takeback law but reflected a market-based solution advocated by the electronics industry to reflect the unique aspects of the television industry. The governor also claimed that the computer takeback law was voluntary and the television takeback law would have been mandatory. In fact, both bills used the same enforcement mechanism where a manufacturer could only sell their products in Texas if they had a recycling plan approved by the Texas Commission on Environmental Quality.

"A more troubling aspect of this veto was the fact that my office was contacted numerous times by the Governor's Office on many of the bills I authored but never about HB 821. In fact, the Governor's Office told supporters of the bill that they were fine with HB 821 during the legislative session. It was only after the bill had passed the Legislature that I received any inkling that the Governor's Office had any problem with the bill. In addition, they have been as inconsistent about their reason for the veto as they have been on whether or not they supported the bill. In his veto message, Governor Perry argued that the bill would hinder competition and imposed burdensome fees and regulations on Texas industry. However, the day after the veto message was released, it was reported in the media that Governor Perry told supporters of HB 821 that the reason he vetoed the bill was because the bill had been written by 'industry.'

"There will be a real cost to Texas local governments and non-profits as a result of this veto. Television manufacturers stepped up to the plate to take responsibility for their products and were prepared to pay the cost of responsibly recycling old televisions. By vetoing this bill, Governor Perry will keep the burden of recycling these old televisions on local governments, taxpayers, charities like Goodwill, and the responsible manufacturers and retailers who are recycling voluntarily. At a time of tight budgets, it is unfortunate that taxpayers and charities will have to continue to pay for the costs of recycling.

"This bill was the result of bringing all interested parties to the table and building consensus on a television recycling bill that I believe could have been a model for the rest of the country. Governor Rick Perry has let all Texans down with his veto of HB 821 because this was a constructive consensus approach to a growing problem of what to do with millions of old TVs."

Sen. Kirk Watson, the Senate sponsor, said: "HB 821 called for the creation of a television recycling program that was to be free and convenient for consumers. The bill represented a compromise between environmental groups and industry. Advocates of the environment saw the bill as a step forward for recycling, and as an important environmental protection, preventing toxic contamination of our soil and water. Industry saw the bill as a solution to a problem and hoped that the bill would become a model for other states to follow.

"With the veto of HB 821, Governor Perry disavows responsible environmental practice, and chooses to levy the costs associated with recycling on taxpayers and nonprofit organizations, like Goodwill Industries, rather than assign responsibility to industry. Regrettably, the governor is choosing to protect big business rather than the people of Texas, even when business is eager and willing to step up and assume responsibility for the end-of-life treatment of their own products."

NOTES: The HRO analysis of HB 821 appeared in the May 13 *Daily Floor Report*.

Disclosure, consumer education, and reporting requirements for certain annuity contracts

HB 1293 by Eiland (Ellis)

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DIGEST:

HB 1293 would have established requirements for insurers to provide to consumers certain disclosures and a buyer's guide regarding certain group and individual annuity contracts and certificates. The disclosures would have been required to contain information about the insurer that provided the annuity, the type of annuity product, the benefits of the product, and the conditions of the annuity contract. The insurance commissioner would have been required to adopt buyer's guides for annuities for which a national guide had been adopted.

If an application for an annuity contract or certificate had been taken in a face-to-face meeting, the person taking the application would have been required to give the applicant both the disclosure statement and the appropriate buyer's guide for the annuity product at or before the time of application. If the application had been taken by another means, the person taking the application would have been required to send these documents to the applicant by the fifth business day after the date the insurer had received the application. If the appropriate buyer's guide and the disclosure statement had not been provided at or before the time of application, a free-look period of at least 15 days, during which the applicant could have returned the annuity contract without penalty, would have been required.

The bill also would have established reporting requirements for certain annuities in the payout period and would have established the specific information the insurer had to report to the contract owner. A violation of the reporting requirements or the requirement to provide disclosure statements and buyer's guides to consumers would have constituted an unfair or deceptive act or practice in the business of insurance.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1293 creates specific disclosure requirements and consumer education standards relating to the sale and marketing of life insurance and annuities. Although the bill establishes standards of transparency and improvements that are important, I believe it will do more harm than good.

"This legislation designates any violation of these standards as an unfair or deceptive act or practice, which would expose agents and insurers to private claims for damages, attorney fees and costs for any such violation. Because the Texas Insurance Code already addresses suitable remedies for such offenses, I am opposed to this bill, which creates greater opportunities for frivolous litigation throughout the state.

"With this veto message, I am directing the Texas Department of Insurance to implement the beneficial provisions of this bill that are within its rulemaking authority."

RESPONSE:

Rep. Craig Eiland, the bill's author, had no comment on the veto.

Sen. Rodney Ellis, the Senate sponsor, said: "This legislation was vetoed because there was the possibility of 'frivolous law suits.' The penalties for violation of the act would have been considered an unfair or deceptive act or practice in the business of insurance and would therefore be subject to Chapter 541 of the Insurance Code, which contains a private cause of action. This veto does not make the argument that this is not a deceptive or unfair act. By vetoing this legislation, the statement is being made that use of current law is no longer available as a remedy for the consumers who are the victim of an unfair or deceptive act in the business of insurance. These individuals, many of whom are elderly, will have to wait on the government to take action if it so chooses. I too am against frivolous lawsuits, but sometimes we need to allow individuals who have been knowingly deceived the right to choose from all available remedies."

NOTES:

HB 1293 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Verification of identifying information on a voter registration application

HB 1457 by Hochberg (Duncan)

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DIGEST:

HB 1457 would have required the secretary of state to adopt rules establishing a "reasonable person" standard for verifying Texas driver's license numbers or Department of Public Safety personal identification numbers on a voter registration application submitted by a voter registrar because the applicant had not met certain requirements. If the secretary of state had been unable to verify the driver's license or ID number on the submitted application or if the number had not been a perfect match with the personal information provided by the registrar, the secretary of state would have been required to provide to the registrar the name and birth date used in the verification process of a submitted application if that information were available.

If a governmental clerical error had been made on a voter registration record, the voter registrar would have been required to correct records and to return the corrected registration record to the secretary of state. If an application had been rejected for lack of verification, written notice from the registrar to the applicant stating the reason would have been required.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1457 would require the secretary of state to develop a system for accepting voter registration applications when the information provided by the voter does not match the indentifying information for that individual in the records of the Texas Department of Public Safety (DPS) or other state agencies.

"Most significantly, this bill would put the responsibility for correcting any mistake in the wrong hands. The secretary of state does not see the application filed with the county voter registrar and therefore is not in a position to determine whether the mismatched information was due to a typographical error at the county level or to incorrect information given by the applicant. A misspelled name or incorrect date of birth on a voter registration application is a strong indication that the application was filled out by someone other than the rightful voter.

"Additionally, requiring acceptance of names on voter rolls that do not match the DPS database would impede the ability to keep the rolls accurate; voters' names would not match other state records, which would consequently prevent them being removed from the voter rolls due to death, imprisonment or other legitimate reasons.

"While Texas should make every effort to ensure that clerical errors do not prevent legitimate voters from registering, the secretary of state is in no position to determine where the error occurred; this is best done at the county level where voter applications are received."

RESPONSE:

Rep. Scott Hochberg, the bill's author, said: "If Governor Perry was denied a voter registration certificate because a clerk spelled his name 'Peiry' instead of 'Perry,' we'd never hear the end of it. But that's what happens to 70,000 Texas citizens each year who have their voter registration certificates delayed or denied because of typos or misread handwriting in county offices that cause their names or birthdates not to pass a state 'matching' test against the DPS driver's license file.

"These are not mistakes made by voters who somehow forgot how to spell their names. Nor are they fraudulent applications. Rather, they represent a relatively small number of data entry errors on the hundreds of thousands of applications typed into the system each year by clerks in voter registration offices.

"There used to be even more rejections, until the secretary of state agreed to not deny applications because of differences in hyphens and other punctuation in names. This bill would have taken the next logical step, directing the secretary of state allow for minor, obvious typos when matching to the DPS file, if the rest of the information matches.

"Despite the governor's claim to the contrary, the bill does not take counties out of the process. In fact, for every suspected typo, the bill requires the county to go back and check the actual voter registration application to confirm that it really is consistent with the information on the DPS file (See HB 1457, page 2, lines 11-18).

"This bill was the product of meetings with the secretary of state, her predecessor, and staff over the past interim, along with detailed research by my office showing that many Texans whose applications were rejected never got to vote. Even worse, our research showed that whether you are ultimately put on the rolls depends on where you live, since some counties put a higher priority on fixing their errors than do others.

"These errors have nothing to do with fraud. The governor's argument on this point is not supported by any facts. Anyone who examines a list of the rejections sees immediately that the great majority of them are minor, innocent typos that should not interfere with a Texas citizen's right to vote.

"Indeed, if a person wanted to register fraudulently in someone else's name, as the governor alleges, that person could simply leave the driver's license space blank on the application, and the registration would be issued without ever attempting to match it against the DPS driver's license file.

"In a session where voting issues were high profile, contentious, and partisan, this bill received unanimous bipartisan votes in committee in each chamber, and was passed on House and Senate Consent calendars. A small allocation for the necessary computer changes was also included in the appropriations bill.

"The right to vote is precious and fundamental. Our current registration process allows this right to be withheld in large numbers at no fault of the citizens trying to register. Why would any elected official, charged with upholding the Constitution, not want to do everything possible to keep this from happening?"

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

NOTES:

HB 1457 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Restricting TxDOT from advertising and marketing toll roads

HB 2142 by McClendon (Carona)

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DIGEST:

HB 2142 would have deleted provisions allowing TxDOT to promote the development and use of toll projects and would have stated that marketing, advertising, and other activities aimed at influencing public opinion about toll roads would not be authorized. The bill would have allowed TxDOT to engage in activities to provide information on the status of pending or ongoing toll projects.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2142 limits the Texas Department of Transportation's ability to market or advertise the use of toll roads or tolling as a method of paying for highway projects, preventing the state from advertising resources such as toll tags. Marketing toll roads as a user-fee-based alternative to congested highways is important to relieving congestion on other state roads and keeping Texas moving."

RESPONSE:

Rep. Ruth Jones McClendon, the bill's author, said: "Current law authorizes the Texas Department of Transportation to engage in marketing, advertising, and other activities to promote the development and use of toll projects. However, Texas law prohibits a state agency from using appropriated money to attempt to influence the passage or defeat of a legislative measure (Government Code, sec. 556.006). HB 2142 passed in both the House and Senate, and would have continued to allow TxDOT to engage in marketing, advertising, and other informational activities regarding pending or ongoing toll projects; however, HB 2142 amended sec. 228.004 of the Transportation Code to bring it into alignment with the Government Code, which would have made it clear that the law does not authorize TxDOT to engage in promotion of toll projects, that being a legislative policy decision, not an administrative one.

"According to information obtained from records maintained by the office of the State Comptroller, over 550 vendor payments were made on behalf of TxDOT for advertising services under account #7281, as follows: $23,690,725.63 in 2008, and $12,382,702.48 thus far in 2009.

"However, there is a lack of departmental transparency in regard to how the appropriations for advertising services are authorized in the TxDOT's base budget or in exceptional items of SB 1. Figures for 2010-2011 expenditures for advertising services are not yet available, but the appropriations bill does not indicate where these funds are authorized in regard to a goal, line item, or strategy, or under a numbered rider.

"The Sunset Advisory Commission Decision Report of January 2009 called attention to the multiple millions of dollars expended by TxDOT on selected advertising

campaigns, including five advertising campaigns that cost an estimated $16 million: 'Click It or Ticket" (traffic operations), 'Don't Mess With Texas' (travel), 'Drive Clean Across Texas' (environmental affairs), Put Texas in Your Corner (vehicle titles and registration), and 'You Hold the Key' (automobile burglary and theft prevention). *See, Sunset Advisory Commission Decision Report,* January 2009, at pages 38-40 [available online at http://www.sunset.state.tx.us/81streports/txdot/txdot_dec.pdf].

"In addition, TxDOT spent another $1.6 million for the 'Keep Texas Moving' campaign in fiscal 2007 to promote toll roads and the Trans-Texas Corridor. Activities to promote the development and use of toll projects have been challenged as the functional equivalent of influencing the passage or defeat of legislation relating to toll roads and toll projects. The Commission's Decision Report cautioned that publicity measures should be used to inform but not to persuade the public about legislative issues. The Report cited the implementation and design of TxDOT's 'Keep Texas Moving' campaign as a 'tolling and Trans-Texas Corridor outreach campaign,' including a website, a newsletter, and radio, television, print, billboard, and Internet advertising. *Id*., at page 14.

"HB 2142 would have restricted TxDOT's expenditures for public relations activities about toll projects to providing information regarding the status of pending or ongoing toll projects, and would have allowed TxDOT to enter into outside service provider contracts or agreements necessary to procure marketing, advertising, or informational (but not promotional) services. It specified that TxDOT would not be authorized to engage in marketing, advertising, or other activities for the purpose of influencing public opinion about the use of toll roads or the use of tolls as a financial mechanism. Specifically in regard to toll projects, HB 2142 would have brought the Transportation Code into alignment with Section 556.006 of the Government Code, which prohibits a state agency from legislative lobbying through use of 'appropriated money to attempt to influence the passage or defeat of a legislative measure.'

"The public testimony offered at open hearings before the Sunset Advisory Commission and Commission's Decision Report raised a broader issue about expenditures of state revenues by TxDOT for outside advertising services, that being a lack of coordination and budgeting strategy for these expenses. Presently, TxDOT does not have a division that is dedicated to the optimization of its outside advertising expenditures as authorized by law. As stated in the Sunset Advisory Commission Decision Report,

> TxDOT's central office should provide statewide coordination for all major marketing campaigns. ... TxDOT's divisions and district offices carry out various marketing campaigns. The Department's Traffic Operations, Travel,

Vehicle Titles and Registration, Environmental Affairs, Government and Public Affairs, and other divisions conduct independent marketing campaigns costing several million dollars each. Under this recommendation, the Department should establish guidelines defining major marketing campaigns and establish a procedure for coordinating activities such as purchasing advertising space, entering into consultant contracts, and timing press releases between divisions and districts. *See, Sunset Advisory Commission Decision Report*, January 2009, at pages 38 – 42-i [available on line at http://www.sunset.state.tx.us/81streports/txdot/txdot_dec.pdf].

"Considering the $17.6 million expenditures identified on the six advertising campaigns cited in that decision report, and the lack of overall departmental focus and transparency concerning expenditures of state revenues for outside advertising services, the commission adopted Recommendation Number 3.4, 'TxDOT should provide central coordination of the Department's major marketing campaigns.' *Id.*, at page 42-i. The commission also adopted a proposal to strengthen the state's general legislative lobbying prohibitions for TxDOT under Chapter 556 of the Government Code, by statutorily prohibiting TxDOT employees and the commissioner of transportation from using any money under the agency's control or engaging in activities to attempt to influence the passage or defeat of a legislative measure. *Id.*, at page 42-i.

"HB 2142 would have brought forward a much-needed and legislatively approved corrective measure to save taxpayer dollars and resolve the toll project promotion issue cited by the Sunset Advisory Commission, in regard to curtailing outside advertising expenditures by TxDOT to influence public opinion to promote toll projects.

"It is extremely disappointing that the veto of HB 2142 will allow the continued expenditure of state funds for the cost of these advertising services to promote toll projects, contrary to the will of the Legislature, which approved the passage of HB 2142 in the House by a vote of 132-1, and in the Senate by a 31-0 vote."

Sen. John Carona, the Senate sponsor, had no comment on the bill.

NOTES: The HRO analysis of HB 2142 appeared in Part Five of the May 8 *Daily Floor Report*.

Revising selection of the Teacher Retirement System board

HB 2656 by D. Miller (Duncan)

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DIGEST:

HB 2656 would have revised the selection by the governor of the Teacher Retirement System (TRS) board of trustees. Instead of appointing one member from a slate of three TRS retirees nominated by the retirees, the governor would have appointed two retiree members from the nominated slate. Instead of appointing two members with demonstrated financial expertise and broad investment experience, preferably in pension fund investment, from a list of nominees submitted by the State Board of Education (SBOE), the governor would have appointed one member from the SBOE list. The board would have remained at nine members. The two retired members would have held office for staggered terms.

This change would have applied only to the appointment or election of a trustee of the TRS board that occurred on or after the bill's effective date. Sitting board members would have completed their terms of office.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2656 decreases the number of Teacher Retirement System (TRS) board members with financial expertise, an inappropriate adjustment in these uncertain economic times.

"The TRS board is responsible for developing the investment policy and making other pension investment decisions on behalf of Texas teachers whose retirement security rests almost entirely with TRS. Because the majority of Texas school districts do not participate in Social Security, many teachers rely on their pension benefits as their sole source of retirement income. The significance and ramifications of the board's decisions on the futures of those who steward our children's education make it imprudent to dilute the board's financial expertise with House Bill No. 2656."

RESPONSE:

Rep. Doug Miller, the bill's author, was unavailable for comment.

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

NOTES:

The HRO analysis of HB 2656 appeared in Part One of the May 8 *Daily Floor Report*.

Allowing the city of Austin to set maximum sales prices for certain multi-family housing near commuter rail stations

HB 2692 by Rodriguez (Watson)

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DIGEST:

HB 2692 would have revised the applicability of existing law that prohibits a municipality from establishing a maximum sales price for privately produced housing units or residential building lots. The bill would have excluded from the prohibition a multifamily residential development of eight or more units intended for private sale, located less than one mile from a commuter rail station, and located in a municipality with a population more than 650,000, with governing officials elected at large, and in which a commuter rail system was approved by an election after November 1, 2004 (Austin).

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2692 would allow the City of Austin to set a price plan on multifamily developments located less than one mile from a commuter rail station.

"However, current law states, with very few exceptions, that a municipality may not adopt a requirement that establishes a maximum sales price for a privately owned housing unit or residential building lot. House Bill No. 2692 would also interfere with the Austin real estate market by artificially capping housing prices. The market should be allowed to thrive without unnecessary government interference."

RESPONSE:

Rep. Eddie Rodriguez, the bill's author, said: "If Governor Perry had not vetoed HB 2692, it would have given the City of Austin another option to create affordable housing around commuter rail stations. Affordable housing is an issue that greatly affects my district and other areas in Austin. A recent comprehensive housing study found that during the last ten years, the lack of affordable housing in Austin has resulted in many members of our workforce moving outside of city limits and being forced to commute. The downward trend is likely to continue unless the city takes action to increase the availability of affordable housing within city boundaries. Addressing this problem has become a regional task that requires innovative solutions. The development of HB 2692 was a process that took more than 7 months. Ultimately, I satisfied the concerns of the Home Builders Association of Greater Austin and earned the support of the City of Austin. I am deeply disappointed that Governor Perry has denied us the ability to explore this tool."

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

NOTES:

HB 2692 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Allowing geoscientists and landscape architects to be hired based on qualifications rather than price

HB 2820 by Chisum (Wentworth)

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DIGEST:

HB 2820 would have amended the Texas Professional Services Procurement Act by expanding the definition of "professional services" to include the practice of professional geoscience by a professional geoscientist. The bill also would have added geoscientists and landscape architects to the list of professional service providers for which a governmental entity would have to select first the most highly qualified provider and attempt to negotiate a fair and reasonable price before selecting the next most highly qualified provider.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2820 would expand the definition of professional services to include geoscientists and landscape architects. The bidding procedure for professional services requires selection based on qualifications without regard to price. This bill would prevent price-based competition for services by geoscientists and landscape architects, and therefore does not guarantee the best value for taxpayers when government entities contract for these services."

RESPONSE:

Rep. Warren Chisum, the bill's author, had no comment on the veto.

Sen. Jeff Wentworth, the Senate sponsor, said: "This bill was thoroughly vetted by two legislative committees in public hearings where arguments both in favor of and opposed to the bill were heard, and the bill passed the Senate by a vote of 31-0 and the House of Representatives by a vote of 138-9. Whoever on the governor's staff recommended that he veto it is less knowledgeable about the bill than the 181 members of the Legislature, and the governor should not have vetoed it.

"In some cases a 'buy' decision can be based on price alone, but the acquisition of certain services may be better served if additional factors are considered. Such is the case of House Bill 2820, relating to contracts by governmental entities for professional services relating to geoscience and landscape architecture.

"Certain products and services, such as pencils or street sweeping, are fairly static in workmanship and component. Other products and services, such as an automobile or subterranean mapping, are more complex, and a more sophisticated consumer would consider more than price before entering into an agreement to acquire these goods or services. The same would apply to landscape architects, who design and install many of the commercial and residential irrigation systems today.

"House Bill 2820 and my Senate companion legislation would have included professional geoscientists and landscape architects among those professional

services that governmental entities may first consider professional qualifications when acquiring services and not have to make a decision based solely on price. HB 2820 would not have prevented price-based competition. If the most qualified service firm does not negotiate an acceptable price, the governmental entity may go to the second most qualified firm.

"I believe the consumer gets what he pays for, and I am disappointed that the selection of a provider of geoscientist or landscape architecture services must make the selection based on price over qualification, especially when public health and safety may be impacted."

NOTES:

The HRO analysis of HB 2820 appeared in the May 11 *Daily Floor Report*.

Grants to entities assisting taxpayers with their federal income taxes

HB 2888 Martinez (West)

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DIGEST:

HB 2888 would have established the Volunteer Income Tax Assistance grant program administered by the Texas Department of Housing and Community Affairs. The grant program would have provided financial assistance to any nonprofit organization or political subdivision in Texas and to certain regional or local coalitions that offered a volunteer income tax assistance program.

Funding for grants would have derived from legislative appropriation, federal Community Services block grant funds, and federal Temporary Assistance for Needy Families (TANF) block grant funds. The department would have sought any necessary federal waivers to use federal funds for this purpose, and the bill would have limited the use of TANF funds for this purpose to no more than 0.25 percent of the total TANF funds awarded to the state per fiscal biennium.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2888 would take funds away from the Temporary Assistance for Needy Families (TANF) program to fund a Volunteer Income Tax Assistance grant program to be administered through the Texas Department of Housing and Community Affairs. Taking TANF dollars away from their intended purpose of serving clients to fund this program is unnecessary. These funds should be used to benefit people, not create more government bureaucracy.

"Furthermore, tax assistance and Earned Income Tax Credit education programs are already provided by the Texas Workforce Commission, Texas' 28 local workforce development boards, and numerous nonprofit organizations and community centers."

RESPONSE:

Rep. Armando Martinez, the bill's author, said: "I am extremely disappointed by Governor Perry's veto of HB 2888. After working closely with both Senator West's office as well as Governor Perry's office, Governor Perry's veto of HB 2888 was a surprise to me. Now, it is very unfortunate that many low and moderate income Texas families may not be able to access up to $11 billion in refunds as provided in the economic stimulus package that was approved by the federal government earlier this year. In a time when many Texas families are struggling, the Texas Legislature saw the need to pass HB 2888; unfortunately, Governor Perry did not."

Sen. Royce West, the bill's Senate sponsor, said: "The governor's veto of House Bill 2888 represents a lost opportunity for Texas. The bill would have helped thousands of low-income families to access millions of dollars from the Earned Income Tax Credit (EITC), the Child Tax Credit and the Child and Dependent Care Credit through expansion of Volunteer Income Tax Assistance programs (VITA).

"The Texas Workforce Commission takes no active involvement in the actual preparation of returns for these needy families. Their effort, while commendable, is limited to encouraging the 28 Workforce Boards to provide space for the activities of the very non-profit VITA programs this bill would have encouraged. They also provide a $3.00 kit to each of these centers. (see: www.twc.state.tx.us/boards/wdletters/letters/01-09.doc)

"Over the last few years existing programs in Texas have returned hundreds of millions in increased EITC refunds. Still, according to estimates by the IRS, low-income families in Texas are losing about $500 million dollars in refunds each year.

"The real loss, however, is the missed opportunity to utilize the expansion of tax credits made available in the federal stimulus legislation. Specifically, these credits are: Making Work Pay Tax Credit ($1.7 Billion), Child Tax Credit ($1.5 Billion), EITC ($500 Million), American Opportunity Tax Credit ($365 Million), and the new Homebuyer Tax Credit ($412 Million). The number of Texas families eligible for these refunds is estimated to be over two million, but only if claimed on the appropriate federal tax return. HB 2888 would have provided working families with the assistance necessary to take advantage of the new and expanded tax credits. This money could have helped stabilize our state's most vulnerable populations and boosted the Texas economy with billions of dollars in new spending.

"Some of the specific objections of the governor are addressed as follows:

- '*… would take funds away from the Temporary Assistance for Needy Families (TANF) program*'

"HB 2888 specifically provides that the program 'may' be funded by transfer of TANF funds, but it also permits the department to utilize other discretionary funds and/or Community Services Block Grant (CSBG) funds. The bill is entirely permissive in every fiscal aspect.

- '*… taking TANF dollars away from their intended purpose of serving clients*'

"Federal directives, published by the U.S. Department of Health and Human Services (HHS), on the TANF program permit use 'in any manner reasonably calculated to accomplish' any one of the four purposes of the TANF program. The second purpose indicated is:

> To end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage; under this purpose, a State could help any needy parent**,** including a noncustodial parent or a working parent, by providing employment, job preparation, or training services. Examples of potential services include job or career advancement activities, marriage counseling, refundable earned income tax credits, child care services, and employment services …

"Tax preparation programs are encouraged by HHS because they have proven to help clients so dramatically. According to the Department website: 'The EITC (Earned Income Tax Credit) lifts one out of seven children out of poverty.' (see: http://www.acf.hhs.gov/programs/ofa/resources/funding_guide.htm#appropriate)

- *'... not create more government bureaucracy.'*

"HB 2888 permissively authorized the Texas Department of Housing and Community Affairs to conduct a grant program. This program in turn would subsidize local organizations (churches, non-profit organizations, and local governments) which establish tax preparation services for low-income families. Because the labor is largely voluntary, the administrative cost estimate from TDHCA (whose board the governor appoints) was lower than the allowable administrative cost of CSBG or TANF programs.

- '*... Earned Income Tax Credit education programs are already provided by the Texas Workforce Commission*'

"HB 2888 did not deal with EITC education programs. It would have encouraged the development and formation of VITA centers, as well as the recruitment and training of volunteer tax preparers. These centers provide tax preparation services to employed TANF-eligible families and other low-income families. Most of these families lack the capacity or resources to file the complicated return which provides an average refund check of over $2,000."

NOTES:

HB 2888 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Revising criteria allowing requests for exemptions from sex offender registration

HB 3148 by T. Smith (West)

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DIGEST:

HB 3148 would have revised the criteria that allow certain young sex offenders to petition courts for an exemption from registering with law enforcement authorities as sex offenders if their convictions were based solely on the ages of the defendant and victim and they had only a single offense. Instead of allowing defendants who were younger than 19 years old with victims who were at least 13 years old to petition for a registration exemption, HB 3148 would have allowed petitions from defendants who were not more than four years older than a victim who was at least 14 years old. The bill also would have allowed registration exemption requests from persons who were younger than 21 at the time of their offense and had criminal charges for indecency with a child or sexual assault dismissed or discharged after a term of deferred adjudication probation, if there were only a single offense based solely on the ages of the defendant and victim.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 3148 would amend current Texas law that allows some sex offenders, in very limited circumstances, to petition a court to be exempt from registering as a sex offender. While House Bill No. 3148 was intended to more narrowly define who could seek a court's exemption from sex offender registration, I believe the bill fails to adequately protect young victims.

"Specifically, the bill would allow an individual who has completed deferred adjudication for the offense of indecency with a child, and who was younger than 21 years old at the time of the offense, to be eligible to petition a court for an exemption from sex offender registration, regardless of the age of the victim.

"While other provisions of the criminal code provide some protections against very young victims being re-victimized in the event that a court were to improvidently exempt their abusers from sex offender registration, I am not willing to take that gamble with the lives of young Texans."

RESPONSE:

Rep. Todd Smith, the bill's author said, "Governor Perry has vetoed one of the most morally compelling bills I have ever filed. I filed the bill because of heartbreaking letters I have received from parents and grandparents describing how their son or grandson has been permanently scarred due to a consensual teenage relationship. All the bill did was give a judge discretion to not place a teen on the sex offender registry for having consensual sex with someone who was at least 14 and not more than 4 years younger than the defendant. Governor Perry apparently believes that every teenager that has a consensual relationship with someone more than 3 years, but less than 4 years younger should be labeled for life as a sex offender. The purpose of sex offender registration is to protect children from child molesters. The monitoring and supervision of non-threatening people wastes law enforcement resources and detracts law enforcement from closer scrutiny of the sex offender

for whom registration was intended — those who are dangerous to children. HB 3148 was passed by a vote of 131-12 in the House and passed unanimously in the Senate. Sixteen witnesses testified in committee in favor of the bill and there was no opposition.

"In his veto statement Governor Perry says that 'sex offenders would be eligible to petition a court for an exemption from sex offender registration, regardless of the age of the victim.' This is simply not true. The bill expressly states that the victim must be at least 14 years old with the perpetrator less than 4 years older. He said he feared this bill would not protect young victims, but this bill only allows a judge to grant an exemption when it is in the best interest of the victim. Some of these 'victims' are now married to the 'perpetrator.' This bill doesn't change the criminality of the offense of statutory rape. It is still a punishable crime. It only gave certain teens in consensual relationships an opportunity to ask a judge for exemption from lifetime registration as a sex offender. Every step was taken to ensure that no dangerous predator would be eligible to petition under this bill. Even if an offender met all the requirements set forth in this bill, (i.e., consensual relationship, victim at least 14, less than 4 year age difference) a judge would still have discretion — if circumstances warranted — to keep them on the list. I believe teens involved in these relationships have committed a sin, but I don't believe — in most cases — that that sin should put them on a list that will literally ruin the rest of their lives.

"Brandon M.'s case is a perfect example. Brandon was in high school when he met a 14-year-old girl on a church youth trip. He was less than 4 years older than she was. With her parents' blessing, they began to date, and openly saw each other romantically for almost a year. When it was disclosed that consensual sexual contact had occurred, her parents pressed charges against Brandon and he was convicted of sexual assault (i.e., includes consensual sex with a minor who is more than 3 years younger than the defendant) and placed forever on the sex offender registry in his state. As a result, Brandon was fired from his job. He will be on the registry and publicly branded as a sex offender for the rest of his life. People in Brandon's situation can't be anywhere near a school, a church, or a park. These people can't attend their own child's elementary school. They can't hold certain jobs that may place them around children. They have difficulty getting any job. They can't attend family functions that may be attended by someone under the age of 17. In Brandon's mother's words, 'I break down in tears several times a week. I know there are violent sexual predators that need to be punished, but this seems like punishment far beyond reasonable for what my son did.'

"Governor Perry has made it clear he wishes to protect the youth of Texas. I feel he has missed a golden opportunity to do so. I will continue to fight for this important legislation that, simply put, delivers people who are of no threat to anyone from a living hell."

Sen. Royce West, the bill's sponsor, said, "I admit to surprise at the governor's veto of HB 3148 and extend my regrets to its author, Representative Todd Smith. For several years spanning multiple legislative sessions, we have listened to the families of those convicted, heard hours of testimony from witnesses and spoken with persons in law enforcement who agree that Texas' system of sex offender registration should make a distinction between sexual predators, dangerous pedophiles and violent sexual assaults, and those consensual activities of a sexual nature that took place between young persons within a certain age range that are addressed by what are commonly called 'Romeo/Juliet laws.'

"HB 3148 and the Senate bill I authored (SB 1709) attempted to do just that. In this instance, I'd like to think that the governor received inaccurate information as to the contents of this legislation, which had the input of victim's rights groups, prosecutors and state officials who work in this area of law.

"To the point, the governor's proclamation states, 'the bill would allow an individual who has completed deferred adjudication for the offense of indecency with a child, and who was younger than 21 years of age at the time of the offense, to be eligible to petition a court for an exemption from sex offender registration regardless of the age of the victim.' All true, except for the underlined portion.

"HB 3148 would have amended Art. 62.301 Code of Criminal Procedure by increasing the eligible age of the person convicted by two years. It also specifically referenced Section 5 (c), Art. 42.12 of the code that governs age-based offenses. In this section, HB 3148 actually raises the minimum age of the child victim from 13 to 14 years old, which is also the age difference between an aggravated and non-aggravated offense under existing Texas law. In addition, the only offenses for which a defendant could have petitioned to be released from registration requirements were those in which it was determined that no violence was involved, there was consent by the victim and the conviction was based solely on the age of the persons involved.

"HB 3148 would have also brought Texas into compliance with federal law by closing an existing five year age gap (13-18) between victim and defendant to four years.

"As a former prosecutor and current supporter of those who advocate for victims of sexual assault, I do know the serious nature of these offenses. However I also recognize the impact on a young person's life who must in Texas register as a sex offender for life for a category of offense that does not require registration in many states across the country and allows registration to be terminated in others and under federal law."

NOTES: The HRO analysis of HB 3148 appeared in Part Two of the May 4 *Daily Floor Report*.

Authorizing transfer of certain real property held by Texas Department of Criminal Justice

HB 3202 by Bonnen (Jackson)

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DIGEST:

HB 3202 would have specified about 332 acres of land near Angleton, Texas that the Texas Department of Criminal Justice (TDCJ) would have been required to transfer to Brazoria County by January 1, 2010. The bill also would have specified about 888 square feet of property and improvements in Houston that TDCJ would have been required to transfer to the City of Houston by October 31, 2010.

The agreements for these transfers would had to contain provisions stipulating that the transferred land be used in a manner that primarily promoted a public purpose to benefit the public interest of Texas. Ownership of the land would have been required to revert to TDCJ if the land were not used in this manner for more than 180 continuous days. The transfer agreements also would have had to include a provision that excluded from the transfer all mineral interests in and under the properties and prohibited any exploration or drilling on the properties related to mineral interests.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 3202 directs the Texas Department of Criminal Justice (TDCJ) to transfer approximately 332 acres of land to Brazoria County and a fraction of an acre to the City of Houston.

"House Bill No. 3202 is different from comparable legislation that transfers TDCJ land because it does not require the payment of fair market value for the land, does not exchange land for other real property and does not involve land that a local government had donated to the state for construction of a prison. In fact, House Bill No. 3202 transfers land that has been held by the state since 1918 to a county without providing any compensation to the state for the loss of the land. Because the public expects the state to be a good steward of its resources, I am vetoing House Bill No. 3202.

"I encourage the county to work with TDCJ to accomplish this transfer through existing mechanisms that establish the fair market value of the land and allow state taxpayers to realize a benefit from the transfer of the land."

RESPONSE:

Neither **Rep. Dennis Bonnen**, the bill's author, nor **Sen. Mike Jackson**, the Senate sponsor, had a comment on the veto.

NOTES:

HB 3202 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Acquisition of gas utility rights-of-way

HB 3346 by Farabee (Averitt)

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DIGEST:

HB 3346 would have included in the definition of a gas utility a person who owned, operated, or managed a natural gas pipeline for which the person represented to a property owner that the person had the right to acquire right-of-way by the use of eminent domain. A gas utility also would have meant a person, firm, or corporation subject to the jurisdiction of the Railroad Commission or a municipality engaged in the business of transporting or distributing gas, not limited to gas used only for public consumption.

HB 3346 also would have excluded from the definition of a gas utility electric cooperatives whose gas storage facilities predominantly were operated to support the integration of renewable resources.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 3346 was a well-intended effort to protect landowners from abuses of eminent domain authority. However, two provisions added late in the session are problematic.

"One provision nullifies the original intent of the legislation by removing added protections for landowners. Another provision conflicts with House Bill No. 2572 — which was signed on June 19, 2009 — by requiring the state to pay for the relocation of all gas utility pipelines in certain state rights of way, a requirement that could cost taxpayers millions of dollars.

"Although I support provisions in this bill that offer higher safety requirements for pipelines located in rights of way, these requirements are already covered by provisions in House Bill No. 2572."

RESPONSE:

Neither **Rep. David Farabee**, the bill's author, nor **Sen. Kip Averitt**, the Senate sponsor, had a comment on the veto.

NOTES:

HB 3346 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Expanding circumstances for expunction of criminal records

HB 3481 by Veasey (Harris)

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DIGEST:

HB 3481 would have expanded the circumstances under which persons were entitled to have their criminal records expunged, including: if someone had been convicted and subsequently granted relief because of actual innocence; if charges had not been filed before the application for an expunction and it was at least 180 days after an arrest for a felony or a misdemeanor; or, if felony charges had been filed and then dismissed for certain specified reasons before the application for an expunction and it was at least 180 days after the dismissal. The bill would have eliminated a requirement that the statute of limitations have expired for some expunctions in which indictments charging persons with a crime had not been presented or had been presented and dismissed and quashed because of mistake, false information, or other reasons indicating absence of probable cause. It would have eliminated a requirement that persons not have been convicted of a felony in the five years preceding the arrest date and would have deleted language that permitted certain class C misdemeanor offenses for which the defendant received deferred adjudication to be expunged.

The bill would have expanded the circumstances under which a person was eligible to have criminal records expunged after being tried, convicted, and acquitted by the Court of Criminal Appeals to include acquittals by intermediate courts of appeals if the period for granting a petition for discretionary review had expired. The bill would have permitted an expunction to be granted any time a prosecutor with jurisdiction over a case recommended an expunction before a person had been tried.

HB 3481 also would have established a process for the automatic expunction of criminal records for persons who were pardoned or who were granted relief on the basis of actual innocence.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 3481 would authorize the expunction of criminal records, including law enforcement case files, 180 days after an arrest if no formal misdemeanor or felony charges have been filed. Current statutory provisions require that the statute of limitations for the particular offense, usually at least two years, expire before criminal records may be destroyed, including in cases involving misdemeanor offenses. Current law provides that an individual is entitled to copies of their expunged records after the statute of limitations has expired. A prosecutor may contest the expunction by proving reasonable cause that the person will be charged, leading the prosecutor to reveal details of the investigation prior to its completion. Expunction statutes should not be used as a means of discovery or as a means to force a prosecutor to rush to file formal charges prematurely. Allowing a person to know the identities of witnesses or the nature of their evidence unnecessarily endangers both law enforcement and citizen witnesses prior to an indictment for

murder, organized crime, sexual assaults and other serious offenses. House Bill No. 3481 precipitates an untenable injustice to victims and a hazard to public safety."

RESPONSE:

Rep. Marc Veasey, the bill's author, said, "This past Friday [June 19], Governor Perry chose to veto House Bill 3481, a bill I authored, and along with a conservative Republican state senator from the Metroplex. If signed by the governor, HB 3481 would have improved innocent Texans' ability expunge their criminal records. Expunctions of criminal records are a vital part of our criminal justice system. Without them, people who are mistakenly charged with a crime may have their lives permanently disrupted when their wrongful arrests are reflected on their criminal records as checked by potential employers, housing authorities, and others.

"Governor Perry's veto of HB 3481 came as a tremendous surprise to me, as the bill was negotiated and agreed to by both criminal defense attorneys and prosecutors. HB 3481 was not a controversial or partisan bill — it passed unanimously in both the Senate and the House of Representatives.

"Governor Perry claims that he was compelled to veto HB 3481 because the bill 'precipitates an untenable injustice to victims and a hazard to public safety.' That statement is not supported by the facts. I authored HB 3481 with the understanding that I wanted to improve the expunction statute, but only if I could do so in a way that was acceptable to both defense attorneys and prosecutors. After much negotiation and compromise, we were able to create a bill that all parties agreed would allow for expunctions when justice demands, while protecting the ability of our prosecutors to get criminals off our streets.

"If Governor Perry had not vetoed HB 3481, we would have improved access to justice, while maintaining safeguards to allow prosecutors to do their jobs. Without these safeguards, we could never have received the support of law enforcement that we did — including support from Tarrant County, Harris County, and the Texas District & County Attorneys Association.

"Governor Perry claims to be protecting law enforcement's ability to investigate and prosecute crime. But when he makes that claim in order to veto a bill that has the full support of prosecutors, Governor Perry protects only his re-election bid in the Republican Primary, at the expense of Texas, its citizens, and its justice system."

Sen. Chris Harris, the Senate sponsor, had no comment.

NOTES:

The HRO analysis of HB 3481 appeared in Part Two of the May 4 *Daily Floor Report*.

Liability limit for doctors employed by certain governmental hospitals and other revisions to local governmental authority

HB 3485 by Coleman (West)

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DIGEST:

HB 3485 would have allowed direct employment of physicians by the Dallas County Hospital District and certain rural hospitals operated by a governmental entity. The bill would have established requirements to enable physicians employed by a hospital to retain their independent medical judgment in providing care to patients. The bill would have established that a physician employed by a governmental hospital could be held civilly liable for up to $250,000 for each single occurrence of bodily injury or death in a health care liability claim. A governmental hospital would have been required to maintain this amount of professional liability insurance or a self-insurance plan covering each employed physician.

Public improvement districts. HB 3485 also would have allowed public improvement district assessments to finance more types of projects and would have revised the boundaries within which a municipality or county could have established a public improvement district. The bill would have revised the financing methods available for improvement projects and the process by which a public improvement district could annex or exclude land from a district.

County assistance districts. The bill would have allowed the appointment of a governing body for a county assistance district and establishment of more than one district in a county. HB 3485 also would have revised the taxing authority of county assistance districts, including revising the maximum amount of tax that could be imposed by a district and allowing districts to apply different rates to different areas to pay for improvements or services that benefitted those areas primarily.

Medical examiners. HB 3485 would have revised requirements for county medical examiners' offices, including staffing structure, certification for examiners, and the circumstances under which a medical examiner was required to perform an inquest. The authority of medical examiners would have been revised, including allowing them to limit or prohibit the harvesting of donated tissue or organs if they determined it would interfere with an investigation and to perform an autopsy without notice to a deceased person's next of kin. The bill would have revised the circumstances under which an autopsy was performed and redefined an autopsy to allow procedures to determine the manner of death, obtain evidence, or identify the deceased. Counties could have created funds to pay for disposing of bodies of deceased paupers.

County procedures. The threshold over which certain county expenditures or contract awards would have to be made using competitive bidding procedures would have been raised from $25,000 to $50,000. Other provisions would have revised processes related to grand jury proceedings, intergovernmental risk management pools, county employee payroll deductions, payment of jurors for jury service, electronic transmission of documents such as warrants and arrest notices, and the sale or licensure of a software application or system developed by the county.

GOVERNOR'S REASON FOR VETO:

"As the husband of a former nurse at a rural hospital, the son-in-law of a rural county physician, and a native of a rural county, I understand the needs of rural hospitals and their patients. I support rural hospitals' intention of attracting more doctors, and would have been glad to sign a bill allowing them to do so by directly hiring physicians.

"However, an amendment added to House Bill No. 3485 late in the session would undermine some of the gains in medical liability reform that have come from caps on physicians' liability. These reforms were passed in 2003 and approved in a constitutional amendment election. The objectionable provision would increase the liability cap for doctors employed directly by hospital districts, as compared to the bill without the amendment. With respect to doctors employed by hospital districts, this amendment creates uncertainty as to the applicability of the liability cap available in a single action when multiple doctors or multiple claims are involved.

"The bill's provision regarding physician liability was neither debated nor discussed, but rather amended onto this bill late in the session. It risks unraveling the progress we made in curtailing excessive liability and ensuring that patients who need physicians will be able to find them. The 2003 medical liability reform has led to thousands of new doctors coming to Texas. The changes proposed by House Bill No. 3485 threaten the progress that reform has made."

RESPONSE:

Rep. Garnet Coleman, the bill's author, said: "It is disappointing that Governor Perry vetoed this important piece of legislation. With the addition of the amendment allowing certain rural public hospitals to employ physicians, this bill would have ensured access to physician coverage across rural Texas. Rural public hospitals in Texas find it more and more difficult to attract physicians to their communities and retain them. Many physicians entering practice today prefer an employee relationship, rather than having the responsibility and burden of setting up and managing a small business. HB 3485 gave rural public hospitals and physicians who want to practice in rural Texas flexibility. Having the option to employ physicians would have helped rural hospitals improve and preserve access to physicians. Without physicians, these hospitals will not continue to exist.

"The governor alleges that an amendment was added in the final days of session that was neither debated nor discussed. However, prior to concurring with all of the Senate amendments, I had multiple conversations with the governor's office, one of them with Sen. Ken Armbrister, the governor's legislative director, as well as another member of the governor's staff.

To be clear — I told the governor's staff that the amendment in question could be removed if it created any sort of problem or if it jeopardized the passage of this

important legislation. Sen. Armbrister assured me that the governor was fine with the amendment and therefore fine with the overall bill.

"Tort reform groups were also contacted concerning the amendment the governor refers to in his veto statement. These groups indicated that they were neutral on the bill. Their neutrality was probably due to the fact that HB 3485 in no way undermines tort reform efforts. Instead, the bill would have furthered those efforts by helping attract more doctors to underserved rural areas and keeping their liability insurance costs down.

"The most recent tort reform efforts undertaken in 2003 limited non-economic damages against physicians, including pain and suffering, to $250,000. However, economic damages such as medical bills and past or future lost wages were not capped. In addition, the current Texas Tort Claims Act limits damages for public and government hospitals to $100,000 for each person or $300,000 for each single occurrence causing bodily injury or death. HB 3485 would have limited the liability of physicians who are employed by public hospitals in counties with less than 50,000 people to an absolute maximum of $250,000, including economic and non-economic damages. Doctors would have further been enticed to practice in these underserved rural areas because the employer hospital would have been responsible for maintaining liability insurance of the employee doctor.

"The worst part is, the only losers with this veto are the people of the state of Texas and the various counties, with no gain or loss to the tort reform movement. In addition to helping rural doctors and hospitals HB 3485 would have saved taxpayer dollars in many other ways by ensuring that county governments have the ability to operate in a more independent and financially efficient manner.

"Additional provisions in HB 3485:

• allow warrants to be transmitted by secure fax or secure electronic mail, which will reduce paperwork and administrative time;

• allow electronic payment methods for jurors, which will speed payment and reduce staff time and paperwork in cutting checks;

• permit the cremation of an unidentified pauper's remains, which is an unfortunate but real need in some of the border counties;

• permit the use of video teleconferencing system for grand jury proceedings, which can reduce travel time for expert witnesses and law enforcement officers, resulting in a savings for the county; and

• update the statute on automatic payroll deductions to permit a county-maintained automated payroll system to be used to process payroll deductions, resulting in reduced administrative costs."

Sen. Royce West, the Senate sponsor, said: "House Bill 3485, as finally passed, was 99 pages long. The bill updated a wide variety of statutory provisions related to the administration of county government. It was also amended in the Senate to change the means of notifying a property owner of a violation of city or county ordinance, to modernize the law pertaining to public improvement districts and county medical examiners, and to provide for the direct employment of physicians by certain hospital districts. The vote was 27-4 in the Senate, and the House agreed with Senate amendments by a vote of 142-2-1. It is the latter provision, regarding the employment of doctors by certain hospital districts, to which the governor apparently objected.

"The veto is curious in this respect. Currently, a doctor practicing independently of a city or county-owned hospital district who is found to be negligent is subject to $250,000 in non-economic damages, and an unlimited amount of economic damages. Also, under current law, the liability of a doctor employed by a city or county-owned facility is capped at $100,000 for non-economic damages and economic damages. As passed, the bill would have made any doctor hired by a hospital district in a county of less than 50,000 in population subject to a cap of $250,000 in non-economic damages and a cap of $250,000 in economic damages. Changes made by the bill would have applied prospectively, so doctors currently employed by city or county-owned hospital districts would retain the benefit of the $100,000 caps. So, the bottom line is as follows. Had this bill not been vetoed, if a hospital district in a county of less than 50,000 which does not currently directly employ physicians, chose to do so, the caps on liability for those doctors would have been $250,000, instead of $100,000. But, their liability for economic damages would have also been capped at $250,000, rather than the unlimited liability for such damages faced by a physician not employed by a political subdivision of the state. Proponents of the 'rural hospital district' amendment showed evidence from insurers that this would actually lower premiums for medical malpractice insurance.

"In our system of checks and balances it is of course the governor's right to exercise the veto, but in this particular instance the bill's sponsor feels that his concern was unwarranted."

NOTES:

HB 3485 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Failure of a lawyer to report barratry and solicitation of employment

HB 3515 by Dunnam (Carona)

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DIGEST:

HB 3515 would have created a new offense of failure to report barratry or solicitation of employment. A lawyer would have committed an offense if the lawyer, while representing a client:

- had acquired knowledge that would reasonably cause a lawyer to believe that another lawyer or person had committed barratry or solicitation of employment under Penal Code, sec. 38.12; and
- had failed to report the knowledge to the appropriate prosecuting attorney and the State Bar of Texas within 45 days after the lawyer acquired the knowledge.

The new offense would have been a class C misdemeanor (maximum fine of $500).

GOVERNOR'S REASON FOR VETO:

"House Bill No. 3515 would criminally punish a lawyer who had not committed barratry for the barratry committed by another person, and would, therefore, make a lawyer not engaged in criminal conduct subject to criminal penalties because of the criminal conduct of others. House Bill No. 3515 would also require lawyers to report to the State Bar of Texas persons who are not subject to the State Bar's jurisdiction. Stopping barratry is good public policy for Texas, but House Bill No. 3515 would be an ineffective means of combating this offense."

RESPONSE:

Rep. Jim Dunnam, the bill's author, said: "The Governor's action in protecting illegal ambulance-chasing is both confusing and disconcerting. The Governor's veto is bad for the legal profession, but even worse for Texans. Lawyers should be required to report barratry, which is a third degree felony, because it would protect citizens from high-pressure illegal solicitation by unethical lawyers and their agents during difficult personal crises. Several provisions of Texas law make persons not engaged in criminal conduct subject to criminal penalties because of the criminal activity of others, such as failure to report abuse.

"To be clear, HB 3515 would not have required lawyers to seek out evidence of criminal conduct against their colleagues. It would have simply required the reporting of barratry witnessed in everyday legal activities, such as depositions. I wish that Governor Perry would have joined me in combating this illegal activity and signed HB 3515."

Sen. John Carona, the Senate sponsor, was unavailable for comment.

NOTES:

The HRO analysis of HB 3515 appeared in Part Two of the April 27 *Daily Floor Report*.

Study of circuit-breaker property tax limitation based on income

HB 3983 by Rodriguez (Watson)

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DIGEST:

HB 3983 would have required the comptroller to conduct a study on property-tax circuit-breaker programs. The study would have examined the ability of such programs to limit the amount of ad valorem taxes that could be imposed on a residence homestead based on the owner's annual income. The study would have focused on design, methods of implementation, and administration of different circuit-breaker models. The bill would have established an advisory committee, chaired and appointed by the comptroller, which would have authored a final report for submission to the Legislature.

The bill also would have made changes to homestead preservation reinvestment zones, including establishing rules for the composition and operating procedures of a board of directors; changing the effective date of a homestead preservation zone; and changing the formula that determines how much a county pays into a tax increment fund.

GOVERNOR'S REASON FOR VETO:

"I am vetoing House Bill No. 3983 because I have serious concerns about language in the bill that requires the comptroller to conduct a study of 'circuit breaker' property tax programs used in other states.

"'Circuit breaker' programs are designed to provide property tax relief to certain individuals based upon their income. The cost of this type of program is usually borne by the state, while the local governments still receive their full share of the property tax. In some states, renters are also eligible for rebates despite the fact that they do not directly pay the property tax.

"These programs have several negative effects. One negative effect is that it breaks the link between what taxpayers pay and what they receive in local services. Under a 'circuit breaker,' some taxpayers will effectively pay no tax but receive the same services and amenities as other taxpayers who do not benefit from the program.

"Such a program would also have a significant cost to the state, since the purpose of the program is to allow local governments to enjoy the political benefits of a tax break without having to carry the cost. This allows them to avoid tough decisions about the level of taxation that the community can bear and what services the voters want them to provide.

"Finally, if such a program were to be adopted in Texas, it would make the distribution of the property tax burden less equitable by shifting it to middle-class property owners. This would make the property tax function more like a progressive

income tax, in that the tax burden would slowly be pushed upwards until only the owners of the most valuable property paid any actual tax.

"Texas property owners could use additional tax relief, and I have worked hard to ensure that they receive relief; however, any solution must be one that makes all property owners better off. This study would undermine all the efforts made to ensure that the property tax has a low rate, is broad-based and is equitable for all Texans."

RESPONSE:

Rep. Eddie Rodriguez, the bill's author, said: "It defies belief that the governor would veto a bill simply because an amendment was added that called for the comptroller to conduct a study. A property tax circuit breaker is a tool that reduces the property tax liability for individuals whose property tax payments represent a large portion of their family income. Depending on how it's structured, property tax relief would take effect as an individual experiences life changes that impact income, such as retirement, reaching the age of seniority, or becoming disabled. The study would have required stakeholder input to assist the comptroller in evaluating and making recommendations about how a circuit breaker system should operate in Texas.

"I believe that it is my job as a legislator to explore as many options as possible to address important issues such as rising property taxes. It seems to me that recommendations from the comptroller and affected stakeholders could only help with the formulation of effective tax policy. I am disappointed that the governor does not seem to share this sentiment. His veto prevents us from exploring this creative and valuable tool to provide relief from the property tax burden of certain vulnerable Texans."

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

Continuing the operation of the judiciary during a disaster

HB 4068 by Gonzales (Hinojosa)

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DIGEST:

HB 4068 would have authorized the Texas Supreme Court to suspend temporarily, without the consent of the parties, procedures for the conduct of any court proceeding affected by a disaster. By rule or order, or on a case-by-case basis, the Supreme Court would have been able to:

- provide abatements and stays;
- suspend or modify filing and service deadlines;
- provide for hearings or trials at locations other than the municipality or county where the proceeding was commenced;
- provide for courts of appeal to accept filings and hear arguments in remote courthouses; and
- provide alternative notice requirements.

The bill also would have allowed district and statutory county court judges, by majority vote, to adopt rules providing a coordinated response for the continued operation of essential judicial functions.

The bill would have amended the Texas Disaster Act to include a provision that one of the act's purposes would be to clarify and strengthen the role of the judicial branch of state government.

If a disaster prevented the Supreme Court from acting in response, HB 4068 would have authorized the chief justice of the Supreme Court to act on the court's behalf. In the event that the chief justice could not act on the Supreme Court's behalf, the Court of Criminal Appeals could have acted on behalf of the Supreme Court. If a disaster prevented the Court of Criminal Appeals from acting, the bill would have authorized the presiding judge of the Court of Criminal Appeals to act on behalf of the Supreme Court.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 4068 seeks to provide authority to the Texas Supreme Court and Texas Court of Criminal Appeals when there is a disaster in the state. Another bill passed during the 81st Legislature Regular Session, House Bill No. 1861, also provides authority over the judicial branch in Texas to the Texas Supreme Court and the Texas Court of Criminal Appeals in the event of a disaster. House Bill No. 1861 and House Bill No. 4068 contain conflicting provisions, and enacting both would lead to time-consuming litigation to resolve these conflicts. In the event that a disaster affects operations of the judicial branch, returning operations to their regular state as quickly as possible is the highest priority. Because of these conflicts and because I believe House Bill No. 1861 provides a better framework for the judicial branch during a state of disaster, I am vetoing House Bill No. 4068."

RESPONSE:

Rep. Veronica Gonzales, the bill's author, said: "While I am pleased to know that HB 1861, of which I am a joint author, was signed into law by the Governor, HB 4068 would have gone a step further in protecting our judicial system in the event of a disaster.

"Unlike HB 1861, this bill would not have required a disaster declaration by the governor in order to implement provisions relating to court proceedings affected by a disaster. This distinction is of particular importance because it allowed for this emergency protocol to exist in the event of a localized disaster not affecting an area large enough to merit disaster declaration.

"For example, a bomb threat or a fire at a courthouse is a disaster that would necessitate emergency provisions, however, would not be likely to result in a disaster declaration by the governor. Under the circumstances, HB 4068 would have allowed the supreme court the ability to implement emergency action, upon evaluation on a case-by-case basis."

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

NOTES:

The HRO analysis of HB 4068 appeared in Part Three of the May 2 *Daily Floor Report*. The HRO analysis of HB 1861 by Eiland appeared in Part One of the April 24 *Daily Floor Report*.

Jurisdiction of County Court of Titus County

HB 4685 by Homer (Eltife)

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DIGEST:

HB 4685 would have allowed the judges of the district court and the county court of Titus County to enter into an agreement granting the county court jurisdiction to hear:

- guilty pleas in felony cases;
- default judgments;
- uncontested civil and family law cases in which a final judgment would be entered; and
- civil and family law cases in which an agreed final judgment would be entered.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 4685 violates Art. 5, Sec. 16 of the Texas Constitution by attempting to provide additional jurisdiction to the Titus County Court through an agreement between the county court judge and district court judge. Under the Texas Constitution, jurisdiction can be transferred only by state law and not by agreements between judges."

RESPONSE:

Rep. Mark Homer, the bill's author, said: "Although served by two district courts, Titus County has periods throughout the year when neither court is hearing cases in the county. It was my intent to increase the efficiency of the legal system in Titus County without the added expense of a county court at law. HB 4685 was written to provide the statutory authorization for the transfer of jurisdiction in four specified areas to the county court if such arrangement was agreeable to the district courts."

Sen. Kevin Eltife, the Senate sponsor, had no comment on the veto.

NOTES:

HB 4685 passed the House on the Local, Consent, and Resolutions Calendar on May 15 and was not analyzed in a *Daily Floor Report*.

Granting John Cook permission to sue the Benbrook Water Authority

HCR 161 by Burnam (Davis)

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DIGEST:

HCR 161 would have waived the Benbrook Water Authority's (BWA) sovereign immunity in order to ensure the protection of the indemnification rights of John Cook, a key witness on behalf of BWA, in the lawsuit *Benbrook Water Authority v. Carter & Burgess, et al.* The BWA entered into a hold harmless and indemnity agreement with John Cook to indemnify him contractually against any legal liability or claim he could have faced as a consequence of his testimony in the lawsuit.

GOVERNOR'S REASON FOR VETO:

"House Concurrent Resolution No. 161 would allow the Benbrook Water Authority to waive its sovereign immunity from lawsuits by authorizing it to enter into a prospective agreement with a witness in a lawsuit. In this case, the authority would agree to indemnify the witness if the opposing party sued the witness regarding his testimony.

"Sovereign immunity protects government entities from lawsuits to prevent them from being treated as a 'deep pocket' in litigation, since any award is ultimately paid with taxpayer money. Sovereign immunity is waived by statute for certain types of lawsuits, including the Texas Tort Claims Act, but should be waived sparingly to protect Texas taxpayers from excessive litigation. Waivers granted by the legislature typically provide the right to sue the state for a specific legal and factual allegation, not the right to sue at a future date if some unanticipated event — in this case a lawsuit against a witness — should come to pass.

"Although the water authority board is well-intentioned in efforts to protect its witnesses from litigation, taxpayers should not be subject to agreements that pledge their money to back unspecified and open-ended protection of witnesses in lawsuits.

"I will only support waivers of sovereign immunity that define specific cases for which a governmental entity may be subject to suit and that cap the damage that taxpayer dollars would be required to cover. An agreement protecting a witness against unspecified potential lawsuits for an unspecified cause of action, with no cap on potential liability, is not a precedent Texas should set in the waiver of taxpayers' sovereign immunity protection."

RESPONSE:

Rep. Lon Burnam, the bill's author, had no comment on the veto.

Sen. Wendy Davis, the Senate sponsor, said: "I am extremely disappointed in the governor's failure to sign HCR 161 into law, a piece of legislation which had near unanimous support from the Texas Legislature. Through his veto, the governor has denied the Benbrook Water Authority (BWA) the opportunity to benefit from expert testimony in legal proceedings to which it is currently a party.

"BWA, a governmental subdivision of the State of Texas, is currently in litigation with an engineering firm over the construction of an above ground storage tank built in 2002. The Texas Commission on Environmental Quality determined that the tank could not be put into use due to its alleged poor construction, and further determined that the risk of rupture of the tank posed a safety risk to the residents of the City of Benbrook. As a consequence, BWA was forced to spend over $1 million to repair the storage tank defects and must spend at least another $500,000 in order for the storage tank to be fully operational.

"A key witness for BWA, Mr. John Cook, has been threatened with litigation by the engineering firm that constructed the tank if he testifies on behalf of BWA. Because of this, Mr. Cook and BWA have entered into an indemnity agreement that indemnifies and holds Mr. Cook harmless if he is sued as a consequence of testifying to his knowledge of the tank defects. Mr. Cook is concerned about the enforceability of the indemnity agreement because BWA, as a governmental entity of the State of Texas, has sovereign immunity.

"To be certain of the enforceability of the indemnity agreement, BWA pursued HCR 161 to voluntarily waive its sovereign immunity so that Mr. Cook's indemnification rights would be assured. This indemnification would free Mr. Cook from concern that his testimony might result in a suit for damages against him personally and would provide BWA with the expert testimony that it needs in order to prove its case against the engineering firm for improper design of the tank.

"HCR 161 would have ensured that the legal system worked properly and effectively. The governor's failure to recognize the importance of this resolution for the citizens of Benbrook is short-sighted, at best. That the governor vetoed a resolution that would have provided assistance to a municipality in the district I represent to seek recompense for failed engineering work is unacceptable, and will ultimately cost the BWA and Texas taxpayers at least $1.5 million."

Establishing a governor's task force to study horse and greyhound racing

HCR 252 by Thompson (Averitt)

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DIGEST:

HCR 252 would have requested that the governor appoint a task force on horse and greyhound racing to:

- support and promote horse and greyhound racing and breeding in Texas;
- review the Texas Racing Act;
- establish guidelines for increasing revenue and creating more jobs in the industry;
- improve the working and living conditions of those who work and reside in and around racetracks; and
- develop ways to enhance participation and enjoyment in the sport.

The task force would have been appointed by the governor and would have had to include representatives of the training and breeding industries, business community, regulatory community, and other experts with an interest in horse and greyhound racing. The task force membership would have had to reflect the demographic diversity of Texas. The task force would have been required to report to the governor, the lieutenant governor, and the speaker of the House, and would have been abolished October 1, 2011.

GOVERNOR'S REASON FOR VETO:

"House Concurrent Resolution 252 is a formal request by the 81st Legislature to create a Governor's Task Force on Horse and Greyhound Racing to promote and support racing and breeding programs in the state. Several of the responsibilities assigned to the task force in this resolution are already handled by the Texas Racing Commission (TRC). Other responsibilities, including review of the Texas Racing Act, are the duty of the Sunset Commission.

"TRC already has the power to regulate 'all persons and things relating to the operation of [race] meetings,' so there is no reason to create a new task force that would duplicate recommendations for this industry. The industry will continue to develop ways to promote racing and breeding in the state without further government bureaucracy.

"Although the legislature failed to pass legislation during the regular session to continue TRC, I will be calling the legislature back into special session to address the continuation of this and other state agencies before their sunset date. Therefore, I direct TRC, in conjunction with private industry, to fulfill the intentions of this resolution by studying the current state of horse and greyhound racing and breeding in Texas and making appropriate recommendations for the industry."

RESPONSE:

Neither **Rep. Senfronia Thompson**, the bill's author, nor **Sen. Kip Averitt**, the bill's sponsor, had a comment on the veto.

Allowing the governor to issue a pardon after successful deferred adjudication

SB 223 by West (Thompson)

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DIGEST:

SB 223 would have expanded the governor's authority to grant pardons, reprieves, and commutations, upon recommendation of the Board of Pardons and Paroles, to cases in which a person had successfully completed a term of deferred adjudication community supervision.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 223 would have given a governor the authority to grant a pardon to a person who had received a judgment of deferred adjudication in a criminal case. Before the authority could take effect, however, the voters also would have to pass a constitutional amendment granting that authority to a governor. The joint resolution that would have allowed the people of Texas to grant that authority to a governor did not pass during the 81st Legislative Regular Session, and Senate Bill No. 223 provided that, without the passage of the amendment, Senate Bill No. 223 had no effect.

"Senator Royce West, Representative Senfronia Thompson and others have worked diligently to seek the passage of a good bill.

"Currently, only a person who has been convicted of a crime is eligible for clemency consideration. A person who has received a judgment of deferred adjudication is not a convicted person, leaving a person who received a lesser form of punishment ineligible to receive clemency. That is not right or equitable.

"Because the statutory authority must be re-enacted by a future legislature along with a joint resolution for a constitutional amendment that is approved by the people of Texas, I reluctantly veto Senate Bill No. 223 because it has no effect."

RESPONSE:

Sen. Royce West, the bill's author, said, "It is unfortunate that Governor Perry was left only with the option of vetoing Senate Bill 223. Similar legislation that would provide the governor the ability to pardon an offense for which the subject has successfully completed deferred adjudication has been introduced twice previously (78th, 79th Legislatures). The third time, we felt, would be the charm.

"SB 223 passed the Senate unanimously and passed the House as amended with no opposition. It addresses a quirk of Texas law that denies relief — in this case, a pardon — in cases for which the courts have determined that justice is best served by allowing them to be dismissed without imposition of a conviction after supervision has been successfully completed. It is inconsistent that a more serious offense that merited conviction can by law be pardoned.

"While SB 223 gained ultimate legislative approval, the accompanying resolution to amend the Texas Constitution granting the governor the authority to act was among legislation to not emerge from the House during the final days of eligibility. SJR 11 was also amended in the House to allow the governor the ability to issue a posthumous pardon.

"We have worked with the Legislature and governor's office to hone this legislation since 2003 and feel confident that given another opportunity, maybe soon, legislation addressing this topic will indeed prevail."

Rep. Senfronia Thompson, the House sponsor, had no comment.

NOTES:

The HRO analysis of SB 223 appeared in the May 18 *Daily Floor Report*. The HRO analysis of SJR 11 by West, the proposed constitutional amendment that SB 223 would have implemented, appeared in the May 20 *Daily Floor Report*.

Establishing pilot program for public transit motor-bus-only lane on highway shoulder

SB 434 by Wentworth (Bolton)

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DIGEST:

SB 434 would have required the Texas Department of Transportation (TxDOT) to establish, in consultation with the Department of Public Safety and associated mass transit authorities and municipalities, a public transit motor-bus-only lane pilot program for highways in Bexar, Denton, El Paso, and Travis counties that were part of the state highway system and had shoulders of sufficient width and integrity.

The pilot program would have allowed public transit motor buses to use a highway shoulder as a low-speed bypass, up to 15 miles per hour greater than the speed of vehicles on the adjacent highway, of congested highway lanes when the speed of vehicles operated on the adjacent highway was less than 35 miles per hour. The program would have had to take into consideration safety, travel time and reliability, driver and passenger perceptions, levels of maintenance and service, and capital improvements by transit authorities in the specified counties.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 434 would create a pilot program that would allow transit buses to use highway shoulders during peak traffic times. Currently, shoulders may only be used by motorists in emergencies or by emergency vehicles. Allowing highway shoulders to be used by transit buses would leave no emergency lane, creating a danger to motorists, emergency personnel and passengers aboard transit buses."

RESPONSE:

Sen. Jeff Wentworth, the bill's author, said: "This bill was thoroughly vetted by two legislative committees in public hearings where arguments both in favor of and opposed to the bill were heard, and the bill passed the Senate by a vote of 29-0 and the House of Representatives by a vote of 146-3. Whoever on the governor's staff recommended that he veto it is less knowledgeable about the bill than the 181 members of the Legislature, and the governor should not have vetoed it.

"Senate Bill 434 was designed to increase mobility in four urban counties as a pilot program. It would have allowed mass transit buses to use the improved shoulders on certain state highways during periods of traffic congestion to bypass that congestion and help maintain a dependable schedule.

"SB 434 was suggested to me by VIA Metropolitan Transit in San Antonio and Capital Metro in Austin and was specifically aimed at Bexar, Denton, El Paso, and Travis counties to alleviate traffic congestion without large expenditures for new roadways or lanes.

"The bill would have created a pilot program in only four of Texas' 254 counties to see how well the proposal worked in these counties. The governor cites safety

concerns about using the shoulder for non-emergency uses, but this program has already been safely and successfully implemented in several other states and cities around the country. If a bus encounters a disabled car or traffic stopped on the shoulder, the bus merges back into the main lanes until it can safely move back to the shoulder. Only sections of highways with good sight-lines are selected for the program.

"In addition, both the Department of Public Safety and the Texas Department of Transportation would have participated in the development of the pilot program."

Rep. Valinda Bolton, the House sponsor, said: "I was very disappointed and surprised when Governor Perry vetoed SB 434, which created a pilot program to allow public buses to travel on safe shoulder lanes in Travis, Bexar, Denton, and El Paso counties.

"Transportation has always been a pressing issue in my district, and with limited funds available for road construction, it is my responsibility as a legislator to look for creative ways to alleviate congestion. I believe we accomplished that goal with SB 434. Not only would the proposed program have eased gridlock on crowded roads, it would have cost the state absolutely nothing.

"The House Transportation Committee's interim report suggested that we pass this type of legislation, and the affected transit authorities all asked to establish the program. When the bill passed both chambers of the Legislature with nearly unanimous bipartisan support, we were happy to be able to provide them with the opportunity to do so.

"Governor Perry said he vetoed the bill because it would compromise the safety of motorists and emergency responders, but that is just not the case. Bus-only lanes have a proven safety record and this program would have been an efficient, effective use of resources. These programs have been proven to ease congestion and reduce travel times for buses without compromising public safety. Minnesota has safely used over 200 miles of freeway and highway shoulders since 1991 and Atlanta, Miami, and San Diego have all pursued similar projects. SB 434 also included provisions specifically requiring TxDOT to ensure that highways used in the program meet safety standards for motorists and emergency responders.

"Senator Wentworth and I worked extensively with local transportation authorities, TxDOT, and other members of the Legislature to guide this bill through the

legislative process. Neither Governor Perry nor his staff raised any concerns about the bill during the session when it passed with almost unanimous support of both houses. If the governor had concerns about the legislation, it would have been helpful if he had brought them to us while we had time to address them. Unfortunately, he chose not to get involved in the process. I am very disappointed to see the constructive hard work of so many go to waste."

NOTES: SB 434 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Safe passing distance for vulnerable road users

SB 488 by Ellis (Harper-Brown)

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DIGEST:

SB 488 would have required the operator of a motor vehicle either to vacate the lane in which a vulnerable road user was located if the highway had two or more marked lanes or to pass the user at a safe distance, which would have been defined as three feet for a passenger car and six feet for other vehicles. "Vulnerable road user" would have been defined as a pedestrian, disabled person, a worker with legitimate business in or near the road, motorcyclist, bicyclist, or person on horseback. The bill would have prohibited the operator of a motor vehicle from maneuvering in such a way as to intend to cause intimidation or harassment or threaten a vulnerable road user.

The bill would have created a misdemeanor offense with a fine of no more than $200 for a violation. If a violation had resulted in property damage, the maximum fine would have been $500, and if the violation had resulted in bodily injury, the violation would have been a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000).

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 488 would create a new class of users of roadways, called 'vulnerable road users,' which would require specific actions by operators of motor vehicles. These vulnerable road users would include pedestrians; highway construction and maintenance workers; tow truck operators; stranded motorists or passengers; people on horseback; bicyclists; motorcyclists; moped riders; and other similar road users.

"Many road users placed into the category of vulnerable road users already have operation regulations and restrictions in statute. For example, a person operating a vehicle being drawn by an animal is subject to the same duties as a motor vehicle, and a pedestrian is required to yield the right of way to a motor vehicle, unless he or she is at an intersection or crosswalk.

"While I am in favor of measures that make our roads safer for everyone, this bill contradicts much of the current statute and places the liability and responsibility on the operator of a motor vehicle when encountering one of these vulnerable road users. In addition, an operator of a motor vehicle is already subject to penalties when he or she is at fault for causing a collision or operating recklessly, whether it is against a 'vulnerable user' or not."

RESPONSE:

Sen. Rodney Ellis, the bill's author, said: "This bill reflected a bipartisan compromise that had support of the most conservative and liberal members of the Legislature. The bill was changed to penalize only the most egregious drivers. For

instance, a compromise struck early in the process made a penalty only when a driver did not leave a safe passing distance even though 'road conditions would allow' that distance. Further, a defense to prosecution was added that absolved drivers when the other road user was at fault.

"Deaths of bicyclists, pedestrians, and other vulnerable road users occur too often in Texas and this bill would have provided some protection. Fines for careless or even malicious drivers might have prevented accidents caused by those drivers in the future.

"I am very disappointed in this veto as the bill likely would have saved lives."

Rep. Linda Harper-Brown, the House sponsor, had no comment on the veto.

NOTES:

SB 488 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Allowing natural gas pipelines in state highway rights-of-way in the Barnett Shale area

SB 686 by Davis (Orr)

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DIGEST:

SB 686 would have allowed a gas utility to lay, maintain, and operate a natural gas pipeline through, across, under, or along a state highway if:

- the pipeline was subject to the jurisdiction of the Texas Railroad Commission and associated safety standards;
- the pipeline complied with all applicable state rules and federal regulations; and
- the highway and associated facilities were promptly restored to their former condition after installation.

The bill would have applied only to a natural gas pipeline located or proposed to be located in a county that contained part of the Barnett Shale natural gas field, in a county located in the boundaries of a metropolitan planning organization, within the corporate limits of a municipality.

The Texas Department of Transportation (TxDOT) would have been able to require a gas utility to relocate a pipeline at a cost to the utility to accommodate construction or expansion of the highway or other public facility unless the utility had a property interest in land occupied by the facility to be relocated. The bill would not have limited a gas utility's authority to use a public right-of-way or affect the authority of a municipality to regulate the use of a public right-of-way by a gas utility or require payment.

A county would have been required to allow subsurface access to a county road right-of-way for the installation of a temporary water line that did not interfere with existing utilities located in the right-of-way.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 686 would authorize natural gas pipelines to be located in state rights of way in certain designated areas of the state. While I agree that this would provide a benefit to communities and reduce the impact on private property owners, the bill conflicts with House Bill No. 2572, which was signed on June 19, 2009, and which accomplishes the same objectives statewide while ensuring that pipelines are installed using the highest safety standards."

RESPONSE:

Sen. Wendy Davis, the bill's author, said, "The governor vetoed an important tool that would have assured protection of private property rights, a tool that had been sought by municipalities throughout the Barnett Shale. This is a regrettable outcome for the people of Texas. The governor's veto of SB 686 is a failure to understand what the bill would accomplish. This important legislation was agreed upon by

all interested parties, including municipalities, oil and gas pipeline operators, and representatives from TxDOT.

"This bill was drafted as a response to citizens seeking to protect their private property rights and would have protected property owners from the exercise of eminent domain to place pipeline facilities on private property.

"Governor Perry believes that HB 2572, which was signed into law, grants the same protections and benefits to private property owners that SB 686 would have accomplished. Unfortunately, HB 2572 does not overcome the legal basis for which TxDOT has been excluding pipelines from controlled access highways (freeways). For years, gas utilities have had the right to install their facilities in public roads pursuant to a provision in the Utilities Code.

"The Utilities Code provision has failed to protect private property owners who are affected by the placement of gas pipelines in two significant ways. First, the Utilities Code only provides this right in public roads to gas utilities, and has not been defined to include the gas gathering and transmission lines that are used by the natural gas drilling industry to carry gas from the well site to the market. Second, a provision in the Transportation Code has been interpreted to mean that 'public roads,' as that term is used in the Transportation Code, does not include controlled access highways (i.e., TxDOT highway rights-of-way).

"SB 686 eliminates a provision in the Transportation Code, which allows TxDOT to deny access to controlled access highway specifically. SB 686 also specifically provided the right to place gas gathering and transmission lines in TxDOT rights-of-way, while current law provides that ability only to 'gas utilities.' Importantly, SB 686 addressed both of these issues within the Transportation Code itself, and any claim superseding authority over the Utilities Code that TxDOT previously argued. HB 2572 solved neither of the problems that exist under current law. Instead, it simply added 'gas corporation' to the protections already in existence in the Utilities Code. It did not address the ability to place lines in controlled access highways, nor did it specifically authorize the placement of gathering and transmission lines, as SB 686 would have done.

"HB 2572 does not prevent TxDOT from continuing to stand on the argument it currently asserts. Instead, TxDOT will continue to assert that the Transportation Code provides them the ability to deny access to gas pipeline companies in their rights-of-way, just as they have used the Transportation Code to deny such access to gas utilities under the same provision.

"On April 21, 2009, the Senate engrossed version of SB 686, subsection (e) read: '(e) This section may not be construed to limit the authority of a gas utility to use a public right-of-way.'

"Subsection (e) of SB 686, in its final form, reads:
'(e) This section may not be construed to:
(1) limit the authority of a gas utility to use a public right-of-way under any other law or…'

"Subsection (e) does not grant any additional rights to gas utilities. The subsection only preserves rights that exist under current law. Contrary to TxDOT's assertions, subsection (e) does not add any rights to gas utilities under either the Transportation Code or Utilities Code as those rights exist today.

"SB 686 sought to solve an existing problem and would have provided an alternative to the use of eminent domain for the placement of gas pipelines on private property. The governor's veto denies Texans an important tool to protect their private property rights, a tool that had been sought by municipalities throughout the Barnett Shale. This is a regrettable outcome for the people of Texas."

Rep. Rob Orr, the House sponsor, said, "I wholeheartedly concur with the statement and sentiments of Senator Davis concerning the governor's veto of SB 686. The governor believes that another bill (HB 2572) passed by the 81st Legislature will accomplish everything that SB 686 was designed to accomplish. I hope that proves correct though I have my doubts. If the Department of Transportation chooses to continue to limit access to certain state rights-of-way, I would like to see Governor Perry leading the charge personally and through his appointed transportation commissioners to ensure that the agency does begin allowing the safe placement of pipelines in the right of way of controlled access highways. If we see the current situation continue, then we all will know that more work remains to be done."

NOTES:

The HRO analysis of SB 686 appeared in the May 19 *Daily Floor Report.*

Revising authority of public improvement districts

SB 978 by West (Elkins)

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DIGEST:

SB 978 would have expanded the range of projects that could be undertaken by a public improvement district (PID), which may be established by a municipality or county. The bill would have expanded eligible projects to include light rail mass transit, streetcar, or similar systems, including vehicle parking facilities, open spaces, community centers, libraries, police, sheriff and fire stations, and other projects. The bill would have expanded the methods that could be used to fund public improvement projects and would have made changes to procedures governing posting and filing notices, dissolving a district, revising assessment rolls, and revising assessments.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 978 expands the types of projects that may be undertaken by a Public Improvement District (PID) without adequately protecting property owners in the PID from incurring the sole or disproportionate costs of projects that clearly have a general municipal or regional benefit.

"These districts were created to enable their residents to fund improvement projects specifically targeted to their respective districts. However, Senate Bill No. 978 broadens the definition of projects that qualify for PID funding to include those that may not directly benefit the property owners who are subject to paying for them. The bill compounds this problem by both permitting projects located outside the PID district and creating districts with non-contiguous acreage, creating a patchwork system that leaves taxpayers with little hope of determining who is paying for what benefit. Under such a scenario, residents of three physically separate parts of a city could be forced to pay for a project located in the county.

"I am concerned that provisions of this bill threaten to violate Texans' rights under Article 1, section 17 of the Texas Constitution, which protects property owners from having to pay project assessments that are not to their direct benefit.

"Ultimately, the bill leaves too many unanswered questions about the reach and financial impact of Public Improvement Districts on Texas property owners. I strongly encourage interested parties and their respective legislators to revisit this legislation with an eye toward increasing transparency and setting clearly defined limits on what taxpayers are being asked to fund."

RESPONSE:

Sen. Royce West, the bill's author, said: "I am, of course, disappointed in the veto. The bill passed the Senate by a vote of 29-2, and passed the House unanimously on the Local Calendar.

"Public Improvement Districts (PIDs) have been authorized in statute since 1987. In recent years, questions have arisen within the Office of the Attorney General and in the general legal community about the practical application of the statute. Senate Bill 978 was an attempt to clarify and update the statute, and to make public improvement districts more useful tools for cities to build targeted infrastructure without levying taxes upon an entire city or county.

"Under the bill, projects undertaken within and funded by assessments upon property within a public improvement district — a defined geographical area — must confer a special benefit on the property located in the public improvement district. So, no project from the list of those eligible in the statute could be undertaken without a finding of this special benefit by the governing body of a county or city.

"Furthermore, rather than creating a situation in which property owners would be confused as to which projects they were paying for through assessments, PIDs are typically created by a political subdivision at the request, by petition, of those very property owners, and only after a public process including findings by the governing body of the political subdivision, a feasibility report, and a public hearing.

"I am heartened by the governor's willingness to reexamine this issue next session, and look forward to playing a role in that process."

Rep. Gary Elkins, the House sponsor, had no comment on the veto.

NOTES: SB 978 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Potential early parole release for inmates finishing rehabilitation programs

SB 1206 by Hinojosa (Edwards)

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DIGEST:

SB 1206 would have required parole panels that, as a condition of release, require inmates to complete a specific rehabilitation program, to name a range of potential release dates. The Texas Department of Criminal Justice could have released inmates during the range of dates if the inmate had completed the rehabilitation program and satisfied all other release conditions set by the parole panel. The range of dates would have had to be at least 30 days and could not have begun earlier than the 45th day before any applicable release date.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 1206 would fundamentally alter the roles and responsibilities of the Board of Pardons and Paroles (Board) and the Texas Department of Criminal Justice (TDCJ) by allowing TDCJ to release an inmate prior to the date established by the Board for release on parole. Senate Bill No. 1206 allows TDCJ to determine that the inmate has successfully completed a rehabilitation program and has met certain conditions for release on parole as specified by the Board.

"TDCJ's primary function is to manage inmates in state prisons, state jails and private correctional facilities, not to decide when to release those inmates.

"I do not think these changes are necessary, and I am wary of the manner in which such changes would be accomplished. Reducing appropriations to TDCJ through a rider in the General Appropriations Act would put TDCJ under budgetary pressure when determining whether inmates have successfully completed rehabilitation programs and satisfied their conditions of release. Additionally, the cost savings estimates of this bill are calculated on the basis of a per diem cost, while most related operational costs for TDCJ are fixed.

"But because I appreciate the goal of Senate Bill No. 1206 to not hold inmates longer than necessary, I am directing the Board and TDCJ to work together to ensure that offenders are not held for extended periods after successfully completing a rehabilitation program required by the Board as a condition for parole. They must set up procedures that provide for TDCJ to notify the Board of the successful completion of parole release requirements so that the Board may act to effect the release to parole."

RESPONSE:

Sen. Juan Hinojosa, the bill's author, said, "I disagree with the governor's interpretation of how Senate Bill 1206 affects the roles of the Texas Department of Criminal Justice (TDCJ) and the Board of Pardons and Paroles (Board). SB 1206 clearly states that the Board will determine whether or not an inmate has met the inmate's release requirements, including which rehabilitation programs the inmate may complete before being paroled. Nowhere in the bill is TDCJ given the authority

to make the final determination as to which rehabilitation programs an inmate must complete before being paroled.

"Further, according to SB 1206, the Board is responsible for establishing a range of dates within which an inmate suitable for parole may be released upon completion of an inmate's rehabilitation program. TDCJ was not granted the flexibility to stray outside the Board's timeline.

"I do agree with the governor's veto statement in that 'TDCJ's primary function is to manage inmates in state prisons, state jails and private correctional facilities, not to decide when to release those inmates.' This is consistent with language in SB 1206 that states TDCJ 'may release the inmate,' since TDCJ, not the Board, has physical custody of inmates.

"Nothing in the wording or the spirit of SB 1206 indicates that TDCJ is making a decision as to which inmates are suitable for release. Unfortunately, the governor has been incorrectly advised that SB 1206 instructs TDCJ to make a release decision, when in fact, SB 1206, as written, aligns with the governor's own interpretation of TDCJ's role and directs TDCJ to release from custody inmates who have been approved for release by the Board.

"The governor also expressed concerns regarding Rider 81 in TDCJ's budget (SB 1, Article V, 81st Session) that would have reduced appropriations for TDCJ commensurate with the cost-savings created by SB 1206, as well as increase appropriations for parole supervision to provide oversight of released inmates. These concerns could have been addressed by a line-item veto of Rider 81 that would have left TDCJ's incarceration budget intact. Instead, the governor chose to veto a sound bill that had the potential to save the state greater than $13.5 million over the biennium, and he has instructed the Board to improve its parole process for rehabilitated inmates. Given the Board's past failures to communicate efficiently with TDCJ regarding such decisions and the Board's failure during the legislative process to discuss this bill in reasonable terms, I am skeptical that the Board will correct the inefficiencies addressed by SB 1206."

Rep. Al Edwards, the House sponsor said, "As much as I prefer that this piece of legislation, SB 1206, be passed into law, the general objectives of the bill will be accomplished by the governor's stated directives to the Board of Pardons and Paroles and the Texas Department of Criminal Justice.

"The governor's directives for the Board and TDCJ 'to work together to ensure that offenders are not held for extended periods after successfully completing a rehabilitation program required by the Board as a condition for parole' will do in essence what this bill was seeking to accomplish.

"I would like to thank the governor for instructing the two agencies to work together in an effective manner in order to have inmates released in a timely manner after the completion of their required rehabilitation program."

NOTES:

SB 1 by Ogden, the general appropriations act, included a contingency rider for SB 1206 that also was vetoed by the governor. The rider would have reduced TDCJ's appropriation for incarcerating offenders by $14.8 million and increased its appropriation for supervising parolees by $1.2 million for fiscal 2010-11.

The HRO analysis of the companion bill, HB 1958 by Edwards, appeared in Part Three of the May 8 *Daily Floor Report*.

Exempting certain semester credit hours from excess undergraduate credit-hour cap

SB 1343 by Hinojosa (Gonzales)

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DIGEST:

SB 1343 would have exempted credit-hours earned toward an associate degree or in dual-credit courses from the excess undergraduate credit-hour cap that subjects institutions to limits on state funding.

GOVERNOR'S REASON FOR VETO:

"Currently, higher education institutions may not receive formula funds for excess credit hours taken by students beyond the established cap, and they may charge students higher tuition rates for those hours. The cap is 30 hours above those required for the degree.

"Senate Bill No. 1343 would exclude all dual-credit courses and all credit hours earned by students prior to receiving an associate degree from counting toward the excess credit hour cap, and would increase the cap to 90 or more hours above those required for a degree.

"I have signed House Bill No. 101, which passed this session, because I agree with its provisions to exclude dual-credit courses from the excess credit hour cap.

"A provision in Senate Bill No. 1343 that would exclude all community college hours from the cap would not effectively address the real problem that many transfer students face: the fact that some credits do not count toward their baccalaureate degrees. This wastes students' time and money, and taxpayer dollars.

"The best solution is to improve articulation agreements and student advising so that students are able to transfer more hours to count toward their degrees. Instead, House Bill No. 1343 increases the cap to 90 or more hours above those required for a degree, removing important incentives for students and community colleges to focus on degree completion. The Texas Higher Education Coordinating Board is currently studying this issue, and I encourage the board members to continue looking for ways to ensure that more hours transfer. I am confident that they will find solutions that will benefit students and institutions."

RESPONSE:

Sen. Juan Hinojosa, the bill's author, said: "The Governor's veto of SB 1343 will be felt in the lives of Texans with associate degrees seeking to enrich their lives and capacity to the Texas economy who must continue to struggle with transferability of their course work.

"Texas law currently caps elective credits that may be taken at in-state tuition rates at 30 — the so-called '30-hour rule.' The rule is designed to keep students from taking elective courses rather than degree requirements to finish college.

"Texans who have earned a baccalaureate degree and are pursuing a second baccalaureate degree are exempt from the 30-hour rule. Texas encourages the pursuit of academic degrees. However, the exemption does not apply to Texans with associate degrees pursuing baccalaureate degrees. SB 1343 would have changed that, helping Texans pursue their academic goals.

"In reading the governor's veto statement, the governor's reading of the bill is inaccurate. Governor Perry claims that SB 1343 would have exempted all community college hours from the cap. That claim is wholly inconsistent with the plain language of SB 1343. SB 1343 would have applied only to Texans with associate degrees in hand who were pursuing baccalaureate degrees. SB 1343 precisely addressed the transferability of credit hours completed as part of associate degree programs.

"The governor cites his own alternative for fixing this inconsistency in the law after the session has ended. It should be noted that the Senate and the House of Representatives approved SB 1343 overwhelmingly."

Rep. Veronica Gonzales, the House sponsor, said: "I am disappointed that SB 1343 was vetoed because it would have eliminated a disincentive for certain individuals to pursue a higher education.

"The State currently exempts all hours earned before receiving a baccalaureate degree from the '30-hour rule' so as not to penalize a student who decides to continue his/her education by seeking a second baccalaureate degree. However, this exemption does not exist for those who have earned an associate degree from a community college and decide to pursue a more advanced baccalaureate degree. There is no policy reason for this discrepancy in law and SB 1343 would have evened the playing field.

"The Governor's veto statement asserts that SB 1343 'would exclude all community college hours from the cap' and 'would not effectively address the real problem that many transfer students face.' I believe this statement is false and misleading. This bill sought to eliminate the disincentive that exists specifically for transfer students who have acquired an associate degree and decide to further advance their education; it does not apply to every community college student that transfers to a university. Furthermore, the only hours that SB 1343 would have excluded are those hours earned towards an associate degree, not all hours taken at a community college.

"While, as the Governor noted, another possible solution may be to increase the number of hours that may be transferred from an associate degree to a baccalaureate degree, this may result in compromising the integrity of many baccalaureate programs.

"SB 1343 was agreed to by both community colleges and universities while resulting in no significant fiscal implication to the State and it received overwhelming support in the House and Senate. With all of these points in mind, I fully intend to continue to work with Senator Hinojosa on legislation to address this issue."

NOTES:

SB 1343 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Court orders to aid in certain child abuse and neglect investigations

SB 1440 by Watson (Madden)

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DIGEST:

SB 1440 would have revised procedures to obtain and issue court orders used in investigations into allegations of child abuse or neglect when persons did not consent to access to a child or the release of records for an investigation after a request by Department of Family and Protective Services (DFPS).

The bill would have established requirements for affidavits newly required to accompany applications for certain court orders dealing with these investigations into child abuse and neglect. The affidavits and application procedures would have replaced current law requiring a showing of "good cause." The affidavits would have had to be signed by an investigator or other DFPS representative and have facts sufficient to lead a person of ordinary prudence and caution to believe that:

- based on the available information, a child's physical or mental health or welfare had been or could be affected adversely by abuse or neglect;
- the order was necessary to aid in the investigation; and
- there was a fair probability that allegations of abuse or neglect would be sustained if the order was issued and executed.

Upon the presentation of an application supported by the required affidavit, courts would have been authorized to order access to a child or the transport of a child for an interview, exam, or investigation after finding that the affidavit was sufficient.

The law would have specified that courts could issue these orders without prior notice or hearing. The law also would have specified that it did not prevent courts from requiring notice and a hearing before issuing an order to aid in an investigation if the court determined that there was no immediate risk to the safety of the child and that notice and hearing were required to determine whether the access to persons, records, or places or transport of a child was necessary to aid in the investigation.

The bill also would have specified that the signature of a referring court judge in certain child support and child protection cases was not required on a proposed order of an associate judge in situations in which the referring court was not required to ratify the proposed order.

GOVERNOR'S REASON FOR VETO:

"As a result of *Gates v. Texas Department of Protective and Regulatory Services*, Senate Bill No. 1440 would establish guidelines for Texas Department of Family and Protective Services (DFPS) caseworkers to follow when making entry and transport-for-interview decisions in alleged child abuse and neglect cases. The court's decision in *Gates* is extremely narrow in its articulation of the standards that must be met for

transporting a child to conduct an interview. The decision also creates uncertainty about how court orders allowing such transport are to be obtained by DFPS under existing law. This court-created uncertainty must be addressed. Senate Bill No. 1440, however, overreaches and may not give due consideration to the Fourth Amendment rights of a parent or guardian.

"DFPS is charged with protecting the unprotected, and all parties involved benefit when procedures are clear and easily understood. Texas law should provide a clearly delineated investigative process that not only supports the rights of parents and guardians, but also provides DFPS with the proper authority and flexibility to protect the most vulnerable Texans.

"I am directing DFPS, through its parental advisory committee, to study the effect of the *Gates* decision on the ability of the department to appropriately enter a residence and, if necessary for the protection of the child, to transport the child for interviews in a neutral location. I am also directing DFPS, through its parental advisory committee, to develop and recommend statewide procedures to follow when seeking court orders to aid investigations, while protecting the rights of parents and families."

RESPONSE:

Sen. Kirk Watson, the bill's author, said: "SB 1440 would have improved our ability to protect Texas' most vulnerable citizens and enabled us to fulfill our moral obligation to help those who cannot help themselves. It is troubling and wrong that Governor Perry has chosen to block it from becoming law.

"This bill includes an amendment, originally filed as SB 1064, that would have secured the rights of parents and families and ensured strong, uniform judicial oversight of a process that is at times tragically necessary to keep our children safe. The bills were joined only because SB 1064 was threatened by delays in the House of Representatives.

"Let's be clear — both pieces of legislation were heard in the House and Senate and approved unanimously at every step. Both the bill and the amendment had the support of a remarkable spectrum of children's advocates, state agency officials, and legislators from both parties.

"SB 1440 would not have granted Child Protective Services greater authority, would not have eliminated parental rights, and the legislation would not have removed due process or ignored the United States Constitution; indeed, it would have ensured Texas law conformed to it.

"Opposition to this bill is based on misunderstandings and misinterpretations. Unfortunately, Governor Perry listened to bad advice, ignored sound, just policy and chose to veto a bill that would have helped protect the children of Texas from abuse and neglect."

Rep. Jerry Madden, the House sponsor, said: "I was the House sponsor of SB 1440. SB 1440 as passed by the Senate was certainly non-controversial. It provided clarification to the Family Code that the signature of the judge of a referring court is not required on a child support or child protection associate judge's proposed order or judgment in order to become the order of the referring court. On the House floor, the language of SB 1064 was added into the bill as a Local and Consent amendment which significantly altered the content of SB 1440. This totally different subject matter created a heightened profile, and it has turned out to not be the non-controversial amendment which I expected. SB 1064 had been scheduled on the House Calendar, and the House Research Organization report indicated it had no known opposition. I was led to believe that SB 1064 had no opposition in the House Human Services Committee hearing, a point that has been subsequently disputed. SB 1440, which now is essentially SB 1064, portends a significant shift in policy. The areas it addresses indeed require attention. The ideas being advocated appear to need more general debate and scrutiny.

"I fully believe that families as well as children need to be protected, and agree that the Department of Family and Protective Services needs certain capabilities to properly perform its mission without unduly interfering with homes and parental rights. The subsequent discussions on the amended SB 1440 raise concerns in my mind that these factors may need additional careful evaluation.

"SB 2080 by Uresti proposes a task force be formed to evaluate ways to reduce the incidence of child abuse in Texas. I would suggest that when this bill is put into effect that someone from the Texas Home School Coalition be appointed to that body. I also volunteer my services to work with all sides in finding common ground by taking SB 1440 and developing a consensus recommendation to insure the rights of families and vulnerable children are both protected. Lacking the time to initiate a plan to work out the differences between the various stakeholders and parties presently sparring over SB 1440, I would recommend you reject it at this point in time.

"I am persuaded a proper balance of interests and just outcomes can be reached if the necessary investment of time and effort are contributed to the endeavor. I have talked with many people on both sides of this issue, and believe they are all

operating in good faith. I expect that between now and next session, by working with my legislative colleagues and all the interested parties which were involved in developing this bill, the prospects for buy-in from those who now may be debating over this issue can be resolved."

NOTES:

SB 1440 passed the House on the May 27 Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

The portion of SB 1440 dealing with the investigations into child abuse and neglect allegations was in SB 1064 by Watson. The HRO analysis of SB 1064 appeared in Part Two of the May 23 *Daily Floor Report*.

Implementing Texas Save and Match higher education savings plan

SB 1760 by Watson (Branch)

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DIGEST:

SB 1760 would have required the Prepaid Higher Education Tuition Board to develop and implement the Texas Save and Match Program. The board would have been required to develop a formula based on adjusted annual household income to match money paid by purchasers under a prepaid tuition contract under the Prepaid Higher Education Tuition program, the Texas Tomorrow Fund II, or a savings trust account, with matching contributions or a matching purchase of tuition units, using money appropriated by the Legislature and other contributions. To be eligible, beneficiaries would have had to be Texas residents or dependents of Texas residents, be younger than 7 years old, and have an annual household income of not more than 400 percent of the federal poverty level.

The bill would have limited participation in the program to five years, either consecutive or nonconsecutive. Contributions or purchases in excess of $500 per calendar year would not have been eligible for a match under the program. Money or tuition units would not have been available as income for purposes of determining eligibility for a TEXAS grant or other state-funded student financial aid. Assets in the prepaid tuition programs and higher education savings plan would have been excluded for purposes of determining family income for determining eligibility for the state's child health plan, financial assistance, or medical assistance.

The program would have been an eligible charitable organization entitled to participate in the state employee charitable campaign. The board would have been authorized to establish pilot projects in an effort to increase participation in the plan.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 1760 would require the Texas Prepaid Higher Education Tuition Board to develop and implement the Texas Save and Match Program to assist qualifying beneficiaries who open a higher education savings plan (529 Plan) or purchase a prepaid tuition contract (Texas Tuition Promise Fund).

"During the 80th Legislative Session, the Prepaid Higher Education Tuition Board was authorized to establish a Save and Match Program as part of the Texas Tuition Promise Fund. Earlier this year, the comptroller's office established a 501(c)(3) foundation to receive tax-deductible donations for the program based on the enabling legislation.

"While I fully support this program, the legislation has an inadvertent drafting error that would no longer allow individuals to make tax-deductible donations to the foundation. My office will continue to work with the comptroller over the interim to draft new legislation to be considered by the 82nd Legislature."

RESPONSE: Neither **Sen. Kirk Watson**, the bill's author, nor **Rep. Dan Branch**, the House sponsor, had a comment on the veto.

NOTES: SB 1760 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Interpretation and application of nonsubstantive recodification bills

SB 2038 by Duncan (Hartnett)

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DIGEST:

SB 2038 would have limited the Texas Supreme Court's jurisdiction regarding nonsubstantive revisions of existing Texas law and would have amended the Code Construction Act to regulate the interpretation and application of nonsubstantive revisions of the law by a court, executive branch agency, or other entity. Under SB 2038, the codification or revision of a statute would not have affected its meaning or effect if the statute at issue in the case was enacted by the Legislature under the direction of Art. 3, sec. 43 of the Texas Constitution, in an enactment having the purpose, declared by the Legislature in the enactment, of codifying or revising statutes without substantive changes and that was prepared for the Legislature's consideration by the Texas Legislative Council.

In interpreting and applying a codified or revised statute, the Supreme Court, other courts, executive branch agencies, or other entities would have been required to give the statute the same effect and meaning that was or would have been given the statute before its codification or revision, notwithstanding the repeal of the prior statute and regardless of any omission or change in the codified or revised statute that the court or other interpreting entity otherwise would have found to be direct, unambiguous, and irreconcilable with the prior version of the statute. Any omission or change in the codified or revised statute for which a court or other interpreting entity had found no direct express evidence of legislative intent to change the sense, meaning, or effect of the statute would have been considered to be unintended and would have been given no effect.

GOVERNOR'S REASON FOR VETO:

"The plain words of a statute are the starting point for interpreting the law. Senate Bill No. 2038 would eliminate this fundamental principle. Citizens, judges, and lawyers may debate the proper interpretation and application of those words but they may not debate what those words are. Senate Bill No. 2038 would abandon that basic and necessary premise. The reliability of the language found in the Texas codes would be subject to second guessing. Judges would no longer be able to apply the law simply by looking at its plain text. Senate Bill No. 2038 would likely result in an increase in litigation as lawyers would challenge the plain meaning of Texas statutes and compel courts to look to repealed codes and former session laws to determine what is Texas law.

"The codification and revision process was established to make Texas law more accessible. Senate Bill No. 2038 would undermine the very purpose of the codification process by forcing both practitioners and ordinary citizens to locate and research old versions of our laws in order to determine if the current Texas codes really mean what they say.

"Similar legislation, House Bill No. 2809, was vetoed in 2001. The concerns that existed then still exist today. Determining our state's laws should not be a burdensome process; Texans should be able to determine what our law says by simply reading the codes."

RESPONSE:

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

Rep. Will Hartnett, the House sponsor, said: "The intent of the Legislature is paramount in interpreting any statute. The Legislature unanimously passed SB 2038 in response to courts' unabashed violation of the Legislature's clearly expressed intent that recodifications cause no substantive change in law. The Legislature unanimously repudiates this violation and demands that the courts adhere to crystal clear legislative intent. I expect that the Legislature will pass a constitutional amendment to preempt any future veto."

NOTES:

The HRO analysis of HB 4126 by Hartnett, the House companion to SB 2038, appeared in Part Two of the May 8 *Daily Floor Report.*

Statute of repose for engineers and architects to be designated responsible third parties

SB 2141 by Wentworth (Hughes)

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DIGEST:

SB 2141 would have prevented an engineer or an architect from being designated as a responsible third party or joined in a lawsuit once 10 years had passed from the date of substantial completion of an improvement or the beginning of operation of equipment that allegedly was in a defective or unsafe condition.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 2141 clarifies the statute of repose that holds that lawsuits against engineers and architects must be filed within 10 years of substantial completion of a project. However, this bill would prohibit engineers and architects from being designated responsible third parties in litigation if the statute of repose has lapsed. Current law allows all potential responsible third parties to be designated as such, and juries are required to apportion fault among all potential parties at fault, including designated responsible third parties. This bill would distort the method of apportioning fault by not allowing potentially responsible architects and engineers to be included in the charge submitted to the jury, potentially allowing other defendants to be held accountable for faults that were not their own."

RESPONSE:

Sen. Jeff Wentworth, the bill's author, said: "This bill was thoroughly vetted by two legislative committees in public hearings where arguments both in favor of and opposed to the bill were heard, and the bill passed the Senate by a vote of 31-0 and the House of Representatives by a vote of 147-1. Whoever on the governor's staff recommended that he veto it is less knowledgeable about the bill than the 181 members of the Legislature, and the governor should not have vetoed it.

"The purpose of the statute of repose is to bring finality to claims; however, a recent court case by the Fourth Court of Appeals in San Antonio undermined this purpose by interpreting current law as to allow for the extension of the 10-year limitation when a responsible third party is designated. SB 2141 was intended to restore the fairness of finality to the statute of repose for architects and engineers who should not be held indefinitely liable.

"By allowing architects and engineers to be designated as responsible third parties after the statute of repose has lapsed, thus allowing such parties to be joined where such joinder would otherwise be barred by limitations, current law renders the statute of repose meaningless in these situations.

"As originally drafted, SB 2141 would have disallowed only the joinder of such parties. It would have still allowed a defendant to designate a responsible third party, thereby leaving a plaintiff with no recourse for a percentage of the liability. By disallowing both joinder and designation of a responsible third party, I believe the

enrolled version of SB 2141 remedied this problem in the fairest and most equitable manner, while restoring the purpose of the statute of repose."

"Subsequent to the governor's veto, the Texas Supreme Court issued an opinion reversing the San Antonio Court of Appeals' decision. The court held that allowing a party to be joined after the 10-year period would defeat the recognized purpose for statutes of repose.

Rep. Bryan Hughes, the House sponsor, was unavailable for comment.

NOTES:

SB 2141 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report.*

Establishing a smart growth work group

SB 2169 by Ellis (Alvarado)

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DIGEST:

SB 2169 would have established a smart growth work group consisting of representatives from a number of state agencies. The work group would have developed, in collaboration with local governments and policy experts, a comprehensive smart growth plan for the state that would have included making recommendations to the Legislature on issues concerning housing, transportation, health, the environment, and other concerns. The work group would have submitted a report to the Legislature on the smart growth plan and policies by January 1, 2011.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 2169 would create a new governmental body that would centralize the decision-making process in Austin for the planning of communities through an interagency work group on 'smart growth' policy. Decisions about the growth of communities should be made by local governments closest to the people living and working in these areas. Local governments can already adopt 'smart growth' policies based on the desires of the community without a state-led effort that endorses such planning. This legislation would promote a one-size-fits-all approach to land use and planning that would not work across a state as large and diverse as Texas."

RESPONSE:

Sen. Rodney Ellis, the bill's author, said: "Governor Perry's veto message showed he clearly did not understand the bill. It would not have 'centralized the decision making process.' The smart growth work group would have had no decision making authority whatsoever. I even clarified this, at the request of the governor's staff, so that the wording was changed from 'develop policies' (which they would have had no authority to implement anyway) to 'make recommendations' and yet still he vetoed it.

"The governor said these are local decisions. The bill specifically said the work group had to work with local governments to develop their report. But these local decisions affect the operations of the Department of Transportation, the Water Development Board, and other state agencies. To have them work together for economic development that enhances the environment would have been helpful for long term planning in the state.

"This bill was intended to begin a discussion about development and how it impacts quality of life. It would have opened up lines of communications between governmental agencies. I'm very disappointed that the governor vetoed it."

Rep. Carol Alvarado, the House sponsor, said: "I am disappointed with Governor Perry's veto of SB 2169. This bill would have simply provided for a group made up of representatives from various state agencies working together with local communities to make recommendations of what smart growth would look like in our

state. This would have created a forum for state agencies involved in the statewide development process to talk about growth-related issues and gather practical information, best practices and lessons learned that could have been extremely beneficial for future development in our state.

"Governor Perry's assertion that the bill would centralize the decision-making process is off the mark and inaccurate. In no manner did SB 2169 give the smart growth work group any decision making authority.

"The contention that 'this legislation would promote a one-size-fits-all approach' is in direct opposition to the basic idea behind smart growth. The smart growth work group would have worked closely with local governments and communities to find recommendations that are unique to each community. The main idea behind smart growth is to find the most beneficial plan for each community and by its very nature is not one-size-fits-all."

NOTES:

SB 2169 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Confidentiality of deliberations of State Commission on Judicial Conduct

SB 2325 by Hinojosa (Madden)

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DIGEST:

SB 2325 would have made confidential and privileged the discussions, thought processes, and individual votes of members of the State Commission on Judicial Conduct and its special counsel and employees. SB 2325 would also have made the identity of a confidential complainant or informant confidential and would have established rules for waivers.

GOVERNOR'S REASON FOR VETO:

"SB 2325 would make 'confidential and privileged' all discussions, thought processes and individual votes of members of the State Commission on Judicial Conduct; discussions or thought processes of employees and special counsel of the commission; and identity of a confidential complainant or informant. As the protections the commission needs to perform its duties are already provided in law, I am vetoing SB 2325."

RESPONSE:

Neither **Sen. Juan Hinojosa**, the bill's author, nor **Rep. Jerry Madden**, the House sponsor, had a comment on the veto.

NOTES:

SB 2325 passed the House on the Local, Consent, and Resolutions Calendar on May 27 and was not analyzed in a *Daily Floor Report.*

Prohibiting former county, district officers in Harris County from lobbying

SB 2468 by Gallegos (Coleman)

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DIGEST:

SB 2468 would have prohibited, in a county with a population of at least 3.3 million (Harris County), a former local government officer from lobbying an officer or employee of the governing body on or under which the former officer served before the second anniversary of the date the local government officer ceased to serve on or under that governing body. A former local government officer would have been prohibited from representing any person or receiving compensation for services rendered on behalf of any person regarding a particular matter in which the former local government officer participated during the period of service as a local government officer. A local government officer would have meant a member of the Harris County commissioners court or other county officer, an officer of a precinct, or a member of the governing board of a flood control district or hospital district, all or part of which was in Harris County.

A violation of these provisions would have been a Class C misdemeanor (maximum fine of $500).

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 2468 is a piecemeal approach to addressing the issue of lobbying at the county and municipal level. The bill's restrictions on local government officers only apply to Harris County. However, if local lobbying is an issue for one Texas political subdivision, then the Legislature should consider the issue on a state-wide basis to avoid creating differing and confusing standards of ethical conduct. The Texas Constitution prohibits criminal penalties that apply in one part of the state but not in other parts. This bill would have created that unconstitutional situation."

"The regulation of lobbying by former state officers and employees is governed by Government Code Section 572.054, which is under the jurisdiction of the Ethics Commission. I urge the sponsors of this bill to work with the Ethics Commission over the interim to develop appropriate language, similar to that found in Section 572.054, for legislative consideration that would apply uniform lobbying standards to all levels of Texas government."

RESPONSE:

Sen. Mario Gallegos, the bill's author, said: "Senate Bill 2468 was an attempt to bring ethics reform to the county level by prohibiting former county officials from immediately becoming lobbyists, requiring them to wait until the second anniversary of leaving office to lobby their former place of work. The intent of the bill was simple — it was meant to stop the revolving door between official and lobbyist at the county level. Laws regulating the lobbying practices of former state-level officials are already in statute. Senate Bill 2468 attempted to mirror those current laws and apply them to county-level officials. I am disappointed Governor Perry vetoed this

bill, thereby derailing legitimate efforts to enact much needed county-level ethics reform.

"In Governor Perry's explanation of the veto, he cites that Senate Bill 2468 was a 'piecemeal' approach to ethics reform in Texas. I am puzzled that the governor felt it necessary to veto a bill that was a positive step towards ethics reform at the county level — especially after the governor's staff assured me that they did not have any issues with the bill. While Senate Bill 2468 was a local bill, only applicable to Harris County, I do not view it as a 'piecemeal' approach to reform. Senate Bill 2468 would have given Harris County the opportunity to serve as a model of ethics reform for other counties to follow. As the most populous county in the state, I believe it is important for Harris County to act as a leader for ethical conduct. I believe that Senate Bill 2468 would have been a positive first step towards county-level ethics reform, because it closely mirrored state-level 'revolving door' language already in statute.

"The governor also stated in his veto proclamation his belief that the measure was unconstitutional. However, during the legislative session, his office worked with my staff in developing the legislation to allay any concerns that the governor may have had with the bill. Up until the day the bill was vetoed, I was assured that it had the governor's approval. Senate Bill 2468 passed through both the Senate and House with minimal opposition."

Rep. Garnet Coleman, the House sponsor, said: "Under current state law there are no revolving door limitations on the post-employment activities of county and other local officials and employees. SB 2468 would have helped prevent undue influence from former local and county officials or employees in Harris County by prohibiting them from lobbying in their former workplace for two years. This bill would have mirrored current state law regulating the post-employment activities of former state officials and employees.

It shouldn't be a surprise that Governor Perry would veto a bill that closed the revolving door of employees on the local level where individuals have rotated in and out of county government and the private sector. These actions send a bad message to Texans when it appears that their government works for the highest bidder instead of its own constituents.

"It could be possible that Governor Perry does not want to draw attention to his own office's revolving door. He calls the legislation a piecemeal approach to the issue of county lobbying and claims he wants to avoid creating differing and confusing standards of ethical conduct. This leaves only the standard that his own office has set, which is that of a revolving door. Ethical behavior in one area of government shouldn't have to wait for the rest of the state to catch up.

"I think the governor is well aware of these circumstances given the number of employees he has had that have rotated from the public sector, to the private sector and back again. He vetoed this bill on the same day he named a former lobbyist that was a former employee of his to his chief of staff position (1, 2).

"At least 17 former Perry aides are now registered lobbyists, according to a Dallas Morning News report (3). This includes a former state representative that formed a lobby firm, left to be Governor Perry's chief of staff from 2002-2004, and then returned to his lobby practice (4). He was followed by another former state representative that had become a lobbyist and returned to serve as legislative director until returning to the private sector (5)."

Sources:
1. Press Release: Gov. Perry Names Sullivan Chief of Staff, http://governor.state.tx.us/news/press-release/12606/
2. Texas Ethics Commission Registration, Ray Sullivan, http://www.ethics.state.tx.us/tedd/lobcon2009d.htm
3. Dallas Morning News, Jan 6, 2009 http://www.dallasnews.com/sharedcontent/dws/news/longterm/stories/010609dnproson1revolve.2c8f642.html
4. http://www.dallasnews.com/sharedcontent/dws/img/01-09/0104PRO_toomey.pdf
5. http://governor.state.tx.us/news/appointment/5098/

NOTES: SB 2468 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Authorizing "product instruction events" for malt beverages

SB 2558 by Gallegos (Thompson)

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DIGEST:

SB 2558 would have authorized certain permit and license holders to conduct up to two "product instruction events" per calendar year to promote the license or permit holder's malt beverages. Events could have been held only on the premises of a retailer licensed to sell alcoholic beverages or on certain brand-identified promotional vehicles. The bill would have limited events to normal business hours and to no more than four hours.

The bill would have authorized product instruction events to be prearranged with and preannounced to a retailer, but would have prohibited a product instruction event from being preannounced to a consumer. The bill would have required the license or permit holder to purchase all malt beverages from the retailer and would have authorized a license or permit holder to open, touch, pour, and serve only malt beverages manufactured or distributed by that license or permit holder.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 2558 would allow beer and malt beverage tastings to be held in a branded vehicle on the premises of a retailer with a permit to sell alcohol, therefore allowing alcohol consumption in a vehicle. The Texas Alcoholic Beverage Commission would be required to increase its on-site inspections to ensure the proper precautions are taken to prevent serving to minors and over-consumption.

"Senate Bill No. 2558, especially the requirement that these events be held in a branded promotional truck, also gives an unfair competitive advantage to large brewers, as smaller operations would be unable to afford to purchase or lease a brand-identified promotional vehicle."

RESPONSE:

Sen. Mario Gallegos, the bill's author, said: "It is unfortunate that Governor Rick Perry chose to veto SB 2558. It was intended to allow certain alcohol permit and license holders to conduct beer and malt beverage tastings at the premises of a retailer holding a license or permit to sell alcoholic beverages for on-or-off-premises consumption.

"Under this bill, no Texas brewery was limited from participating, or excluded from educating the public on their product. As for the governor's state agency resource justification, the Legislative Budget Board fiscal analysis noted no significant fiscal impact to The Texas Alcoholic Beverage Commission (TABC). Furthermore, TABC never expressed concern over SB 2558 during the legislative process.

"Lastly, I am perplexed with the veto because the governor has previously signed legislation granting similar authority to the wine and spirits industry. This bill would have created parity amongst the alcohol industry in Texas."

Rep. Senfronia Thompson, the House sponsor, had no comment on the veto.

NOTES: SB 2558 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Waiving sovereign immunity to authorize MBP Corp. to sue the Galveston Wharves

SCR 59 by Jackson (Taylor)

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DIGEST:

SCR 59 would have waived the sovereign immunity of the Board of Trustees of the Galveston Wharves to allow MBP Corp. to sue Galveston Wharves over terms of a lease and development agreement concerning the Galveston Cruise Ship Terminal.

GOVERNOR'S REASON FOR VETO:

"Senate Concurrent Resolution No. 59 would grant MBP Corp. permission to sue the Board of Trustees of the Galveston Wharves, a Galveston city utility, for breach of a lease and for invading its leasehold. In dispute is whether the lease permits the board to construct an air-conditioned walkway on the roof of Galveston's Mallory Building to allow cruise ship passengers access to ships.

"Senate Concurrent Resolution No. 59 would have been acceptable if it had been limited to this provision and had capped damages for which Galveston taxpayers could ultimately have been held responsible.

"The permission to sue granted by Senate Concurrent Resolution No. 59, however, is not limited to the dispute regarding the rooftop of the Mallory Building, and authorizes future suits on any property involved in the lease. Moreover, the resolution contains no cap on the damages for which the taxpayers could be ultimately held responsible under the litigation.

"A lawsuit on this matter is currently pending in the 14th Court of Appeals of Texas. The court's decision on the sovereign immunity issue could eliminate the need for this resolution. If the court rules against it, MBP Corp. could return to the Legislature for a resolution that limited the permission to sue to the matter at issue in the resolution and set a reasonable cap on the damages sought.

"I will only support waivers of sovereign immunity that are specific as to the cause of action for which a governmental entity may be subject to suit, and that set a reasonable cap on damages."

RESPONSE:

Sen. Mike Jackson, the author of SCR 59, had no comment on the veto.

Rep. Larry Taylor, the House sponsor, said: "Governor Perry listed three main reasons for vetoing SCR 59 as passed: 1) the resolution was not limited to the specific suit at hand, and authorized future suits, 2) the resolution did not contain a cap on the damages for which taxpayers could be responsible, and 3) a pending court decision on the sovereign immunity issue could eliminate the need for this resolution.

"In response, legislative intent was discussed and established on the House floor between Rep. Taylor and Rep. Lewis and recorded in the House Journal to reflect the resolution's scope, specifically not to include future disputes. Moreover, the floor discussion recognized that both parties had confirmed such limitation, expressed by issuance of letters distributed to members of the House Committee on Judiciary and Civil Jurisprudence. These documents were provided to the governor's staff as well.

"No cap was included in the resolution because the damages are entirely dependent on the Galveston Wharves' actions. MBP sued the Wharves only after the Wharves came onto MBP's leasehold and took MBP's property (the Mallory Building rooftop). After the rooftop suit was dismissed based on the Wharves' sovereign immunity claim, the Wharves notified MBP that the Wharves was unilaterally reducing the amount of property it leased to MBP. No suit has been filed on that claim, but there is little doubt that the Wharves would again claim it is immune from such suit. If the Wharves were to retract its threat to take back property covered by the lease then no suit (and no damages) would be sought for this claim. The damages are dependent on the Wharves' actions and are limited to the damages recoverable under applicable Texas law.

"Most importantly, counsel for the Port admitted before the Senate Jurisprudence Committee that the Port has the right to sue Mr. Mitchell, yet that same right is not afforded in return without legislative permission. In fact, during recent arguments on appeal before the 14th Court of Appeals, counsel for the Port rebuked the Mitchell representation for not having sought or obtained passage of a legislative resolution waiving sovereign immunity. Therefore, passage of a resolution was sought for purposes of the court moving forward with related proceedings. And the pending appeal does not eliminate the need for this resolution. The appeal only involves the Wharves' action in taking the Mallory Building rooftop, not the Wharves' threat to reduce the amount of property under the lease.

"Due to the veto of SCR 59, developers are less likely to consider entering into an agreement with the Wharves to improve local properties and invest millions of dollars for the betterment of the community as a whole. So long as developers are denied access to the courts to protect their rights under a lease, local improvements will come to a halt and interested parties will look to the governor's veto as precedent that no civil remedy is available when their respective rights have been violated."

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