HOUSE
RESEARCH
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Texas House of Representatives

June 30, 2011

Vetoes of Legislation

82nd Legislature

Gov. Rick Perry vetoed 24 bills approved by the 82nd Legislature during the 2011 regular legislative session. The vetoed bills included 17 House bills and seven Senate bills.

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 HB 1, the general appropriations act for fiscal 2012-13, will appear in the upcoming House Research Organization state finance report, *Texas Budget Highlights, Fiscal 2012-13*.

Focus Report: *Number 82-5*

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DIGEST:

HB 242 would have prohibited a driver from using a hand-held wireless device to read, write, or send a text message, instant message, or e-mail unless the vehicle was stopped. A driver would have been exempted from prosecution if the driver were dialing a phone number, using a hands-free or global positioning system device, or relaying information using a device affixed to a vehicle as part of the driver's job.

The bill also would have allowed certain retired peace officers to be eligible for concealed handgun licenses and outlined certain services that the special rangers and Texas Rangers could perform.

GOVERNOR'S REASON FOR VETO:

"Texting while driving is reckless and irresponsible. I support measures that make our roads safer for everyone, but House Bill 242 is a government effort to micromanage the behavior of adults. Current law already prohibits drivers under the age of 18 from texting or using a cell phone while driving. I believe there is a distinction between the overreach of House Bill 242 and the government's legitimate role in establishing laws for teenage drivers who are more easily distracted and laws providing further protection to children in school zones.

"The keys to dissuading drivers of all ages from texting while driving are information and education. I recommend additional education on this issue in driving safety and driver's education courses, public service ads, and announcements, and I encourage individuals and organizations that testified in favor of the anti-texting language included in this bill to work with state and local leaders to educate the public of these dangers."

RESPONSE:

Neither **Rep. Tom Craddick**, the bill's author, nor **Sen. Glenn Hegar**, the Senate sponsor, was available for comment.

NOTES:

The bill's ban on texting while driving was added to HB 242 as an amendment on the Senate floor. The amendment contained language similar to HB 243 by Craddick, which had passed the House by 107-16 on April 8 but was left pending in the Senate Transportation and Homeland Security Committee.

The HRO analysis of HB 243 appeared in the April 7 *Daily Floor Report*. The HRO analysis of HB 242 appeared in the May 7 *Daily Floor Report*.

DIGEST:

HB 335 would have required a state agency — a department, board, commission, or other entity of state government, other than a university system or institution of higher education that has statewide authority and was created by the Texas Constitution or a state statute with an ongoing mission and responsibilities — to submit a report to the Legislative Budget Board (LBB), the governor, the lieutenant governor, the speaker of the House, and the appropriate standing committees relating to health care reform.

A state agency would have been required to submit a report of an expenditure incurred in implementing a provision of a federal health care reform law if the provision:

- required a person to purchase health insurance or similar health coverage;
- required an employer to provide health insurance or similar health coverage to or for employees;
- imposed a penalty on an employer who did not provide health insurance or similar health coverage to or for employees;
- expanded eligibility for the state Medicaid program or the state child health plan program;
- created a health insurance coverage mandate affecting a person; or
- created a new health insurance or similar health coverage program that was administered by the state or a political subdivision of the state.

A state agency also would be required to submit a report of an expenditure incurred in implementing a provision of a federal health care reform law if the Legislative Budget Board determined that it was necessary to a comprehensive and continuing review of a program or operation of a state agency.

The report would have had to:

- cite the specific federal statute or regulation that required the state to implement the provision;
- state whether the provision required or allowed a state waiver or option;
- describe the state action required to implement the provision;
- identify the individuals, legal entities, and state agencies that could be impacted by the implementation of or refusal to implement the provision; and
- estimate the cost to be incurred by the state to implement the provision.

GOVERNOR'S REASON FOR VETO:

"HB 335 would require state agencies to submit a report relating to the implementation and requirements of federal health care reform laws. While Texas should make every effort to assess the impact of federal legislation on the state, I do not think the mandate required by HB 335 is necessary, as this information would be available upon request of state leadership. As such, I will be working with state leaders to direct state agencies to provide information necessary to assess the impact of overreaching federal health care legislation on Texas."

RESPONSE:

Rep. Mark Shelton, the bill's author, said: "HB 335 was intended to show the financial consequences in regard to the federal health care laws that have been enacted by the Obama administration. My personal experience as a doctor has led me to have great concern with this overwhelming cost to our state's budget. Transparency must be provided to allow for Texas taxpayers to know where their hard earned money is going."

Sen. Brian Birdwell, the Senate sponsor, said: "The goal of HB 335 was to detail the financial consequences associated with President Obama's federal health care mandates. Taxpayer-funded health care expenditures must be transparent to ensure that Texans know how their money is being spent. I look forward to working with Governor Perry to continue to expand fiscal transparency in our state's health care system and in all areas of state government."

NOTES:

HB 335 was analyzed in the May 7 *Daily Floor Report*.

DIGEST:

HB 397 would have established the Bureau for Economic Development of the Border Region, which would have been administered alternately by a public or private higher education institution to facilitate research and provide recommendations to the Legislature on economic development opportunities in the border region through public-private partnerships.

The bill would have established a steering committee made up of nine members, including the chair of the House Committee on Border and Intergovernmental Affairs and the chair of the Senate Committee on International Relations and Trade. Other members would have been appointed from the University of Texas at Brownsville, the University of Texas - Pan American, the University of Texas at El Paso, the University of Texas at San Antonio, and Texas A&M International University. Members of the steering committee would have been selected to provide expertise in financial planning and development, construction, engineering, economic development, employment, or trade.

The Legislature would have been prohibited from making an appropriation for the duties or functions of the bureau. The bureau could have solicited and accepted pledges, gifts, and endowments from private sources to support its functions.

GOVERNOR'S REASON FOR VETO:

"House Bill 397 would create a new Bureau for Economic Development of the Border Region. The administration of this bureau would rotate every two years among a private university and five public universities. This legislation does not provide any additional funding to the institutions of higher education to administer this bureau, and would therefore put a fiscal burden on the universities, potentially redirecting their funds away from their primary purpose of education.

"In addition, several state organizations, both public and private, currently perform similar economic development functions, and there are tools in place to encourage job creation throughout the state, including the border region. This bureau is an unfunded mandate on institutions of higher education and duplicates the work several other organizations already perform."

RESPONSE:

Rep. Veronica Gonzales, the bill's author, said: "I am extremely disappointed in Governor Perry's decision to veto HB 397, a bill that would have created a bureau tasked with realizing the full economic potential of the Texas-Mexico border. The governor states that HB 397 would place undue financial strain on universities. How-

ever, the legislation provides a framework for raising private money to fund the bureau. Additionally, the bill's language specifically allowed any university involved to opt out if it felt that it was unable to house the bureau. The governor also stated that the bureau would duplicate the efforts of other organizations. This argument was considered by the Legislature and dismissed. The bureau would serve to implement new research, make recommendations to the Legislature, and focus on the entire border region, which is not currently being done by any university.

"The economy along the border is truly a sleeping giant with endless potential. By vetoing HB 397, the governor derailed a significant step toward realizing this potential, illustrating his lack of knowledge on what the border region has to offer."

Sen. Carlos Uresti, the Senate sponsor, said: "HB 397 — a compromise measure agreed to by a number of stakeholders with divergent, yet reconcilable interests — was designed to enhance the growing opportunities for economic growth in the border region of Texas. While other entities are addressing this potential, the bureau that HB 397 sought to create would have aided and complemented these efforts — to the great benefit of the border region and the entire state as well. Despite the veto proclamation issued by the governor, HB 397 would not have imposed an unfunded mandate. The bill provided that the bureau be funded through pledges, gifts, and endowments from private and business entities. Moreover, the fiscal note for HB 397, as prepared by the Texas Legislative Budget Board, stipulates that the bill would have no fiscal impact to the state or units of local government."

NOTES: HB 335 was analyzed in the May 7 *Daily Floor Report*.

DIGEST:

HB 990 would have changed requirements for county participation in a homestead preservation reinvestment zone that could be designated in an area that met various criteria set forth in state law (East Austin). It would have deleted a provision giving effect to an ordinance establishing such a zone at the point when a county (Travis) adopted a final order specifying that the amount of tax increment it would deposit into the zone's increment fund would be equal to the increment specified by the municipality (Austin). Under the bill, the county would have paid into the fund the same percentage of the increment as the municipality.

The bill would have required the board of directors of the homestead preservation reinvestment zone to consist of at least six and not more than 16 members — unless a larger number was necessary to satisfy other requirements — appointed in equal portion by the city of Austin and Travis County. It also would have established requirements for board membership and powers.

GOVERNOR'S REASON FOR VETO:

"House Bill 990 would change the terms by which Travis County may participate in a homestead preservation reinvestment zone with the City of Austin in East Austin. Although the stated purpose of House Bill 990 is to encourage Travis County to participate in the zone, the county has not expressed support for the bill.

"This bill would exempt Travis County from regulations established for reinvestment zones under Chapter 311 of the Tax Code by allowing the county to exceed the 15-person limit set for reinvestment zone boards and reducing the share of tax revenues the county must contribute to the zone fund.

"The purpose of a reinvestment zone is to provide financial avenues for redevelopment in blighted areas, yet the zone in question is not in a blighted area."

RESPONSE:

Rep. Eddie Rodriguez, the bill's author, said: "I am disappointed that the governor vetoed HB 990, a bill that simply gives Travis County equality, with the City of Austin, in a tax increment financing (TIF) zone designated for affordable housing. The bill is part of a larger program established by a City of Austin ordinance that created a Homestead Preservation District to mitigate the effects of rising property taxes in Central East Austin by using three tools: a land trust, a land bank, and a TIF. The decision to enter into the TIF is a local decision by the city and the county.

"The governor states in his veto message that the area targeted is not 'blighted or economically distressed.' I invite the governor to take a tour of Central East

Austin with me and talk with the residents of Central East Austin so they can tell him whether or not the area is economically distressed. This area has experienced gentrification, and longtime minority residents are struggling to pay their property taxes.

"The governor also says the county did not support the bill and therefore he must veto. The Travis County Commissioners Court asked for this change in 2009. This session, the County had no official position on the bill.

"I received letters of support from two county commissioners. One county commissioner opposed the bill because of his opposition to the existing Homestead Preservation District program and continues to willfully misrepresent the entire program.

"Despite this setback, I look forward to working with the city and county on ways to implement the TIF zone designated for affordable housing. The city and county can enter into an inter-local agreement to implement the intent of House Bill 990.

"It is unfortunate the governor does not place the same heavy importance on local input when it comes to other pieces of legislation that force county sheriffs to become immigration officers or take away the local control of the Travis County Healthcare District.

"I do hope the governor can take time out of his busy national political schedule to join me on a tour of Central East Austin to better understand the needs of actual Texans."

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

NOTES: HB 990 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Revising limits on excess undergraduate credit hours

HB 992 by Castro (Zaffirini)

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DIGEST:

HB 992 would have exempted certain semester credit hours from being counted in determining whether a student had exceeded the undergraduate semester credit-hour cap of 30 hours beyond the student's degree plan. Credit hours exempted from the cap would have been those earned before receiving an associate degree that had been previously awarded that were in excess of the number required for completion of the degree.

An institution of higher education also would have been required to inform students before the end of the first semester in which the student was enrolled at the institution about the limitations on the number of courses that could be dropped under certain circumstances.

GOVERNOR'S REASON FOR VETO:

"House Bill 992 would exempt community college semester credit hours, other than those required for a baccalaureate degree, from counting against the excess semester credit hour cap, which is 30 hours above the degree requirement. House Bill 992 removes important incentives for students and community colleges to focus on degree completion.

"House Bill 992 would encourage students to waste time and money, along with taxpayer dollars, and would prevent students and community colleges from being held accountable for responsible academic planning and advising.

"Rather than exempt non-required community college courses from the excess semester credit hour cap, a better solution is to improve matriculation agreements and student advising so students can transfer more hours that do count toward degree completion."

RESPONSE:

Rep. Joaquin Castro, the bill's author, said: "It is unfortunate that Governor Perry has chosen to veto a bill that would have saved students money and increased the number of higher education degrees awarded in Texas.

"House Bill 992 would have removed bureaucratic obstacles that prevent otherwise successful students from completing their higher education, while maintaining responsible policies to ensure students and institutions are held accountable for their actions.

"Furthermore, the governor's veto statement reflects a fundamental misunderstanding of the legislation. House Bill 992 would have only applied

to students who complete an associate's degree and would have only exempted community college semester credit hours from counting towards the excess hours cap if those hours were not necessary for the completion of the associate's degree.

"The governor's veto statement exhibits both a lack of thought, and an unwillingness to modify our higher education policies to better serve our students and ensure Texas has an educated and productive workforce."

Sen. Judith Zaffirini, the Senate sponsor, said: "I am dismayed that Governor Rick Perry vetoed HB 992 by Representative Joaquin Castro, which I sponsored in the Texas Senate. In a time in which much is being made of transparency and accountability in higher education, the governor vetoed a bill that would have provided additional information to students regarding state policy.

"Without HB 992 there is no requirement that institutions of higher education notify students about policies that may restrict their abilities to enroll in courses of their choice. Since the state restricted the number of courses a student may drop, it also should require that students be notified about this rule. Governor Perry's veto ensures that this notice will not be required.

"What's more, the governor was ill-advised in vetoing HB 992 on the basis that it 'would exempt community college semester credit hours, other than those required for a baccalaureate degree, from counting against the excess semester credit hour cap….' This is not accurate.

"Instead, HB 992 would have exempted from the excess hour rule only those semester credit hours earned in excess of an associate's degree that had been awarded previously, not all semester credit hours earned prior to the receipt of the degree. This bill would have ensured that students who received associate's degrees and then transferred to four-year institutions would not be punished for taking excess hours while enrolled at their community colleges.

"The exception offered in HB 992 is narrower than current exceptions and intended to ensure that students who transfer to four-year institutions are provided every opportunity to receive a baccalaureate degree."

NOTES: The HRO analysis of HB 992 appeared in the April 13 *Daily Floor Report.*

Tenant suits against landlords for not providing copy of lease

HB 1429 by Deshotel (Carona)

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DIGEST:

HB 1429 would have required a landlord to provide at least one copy of a lease to at least one party to the lease within three business days of the lease being signed. If more than one tenant had been a party, the landlord would have had to provide a copy within three days of receiving a written request to a tenant who had not received a copy. If a landlord failed to comply, the tenant could have sued to recover actual damages, court costs, and reasonable attorney's fees. HB 1429 also would have prohibited a landlord from retaliating in certain ways against tenants who had established, attempted to establish, or participated in a tenant organization.

GOVERNOR'S REASON FOR VETO:

"HB 1429 would create a new cause of action allowing residential tenants to file suit against landlords who fail to provide tenants with a copy of their lease in certain circumstances. This legislation would expose landlords to private legal claims, including damages, attorney fees and costs, for failure to turn over the lease as required. Although HB 1429 requires a tenant to provide notice to a landlord before filing suit, the notice requirement does not give the landlord time to address the violation before a lawsuit is filed, thus having no effect on preventing litigation. Furthermore, HB 1429 provides that a tenant may be awarded attorney's fees in a lawsuit filed under the bill's provisions, creating an incentive for attorneys to seek out and file such suits. The litigation expenses incurred by landlords as a result of this bill could be significant, and would likely be passed on to other tenants through higher rents and fees. Thus, although the bill seeks to protect tenants in rare cases where they are not provided with a copy of their lease when it is signed, I believe it would do more harm than good."

RESPONSE:

Rep. Joe Deshotel, the bill's author, and **Sen. John Carona**, the bill's Senate sponsor, said in a joint response: "HB 1429 was the product of extensive negotiations between tenants' right groups and banking and industry interests. The version of the bill that Chairman Deshotel negotiated in the House and Chairman Carona carried through the Senate had broad support from those on both sides of the debate and represented a step forward for tenants in Texas.

"We understand that the governor vetoed this bill because it established a cause of action to enforce the protections it creates. This is an unfortunate outcome on an issue that affects so many Texans."

NOTES:

HB 1429 was analyzed in Part Two of the May 12 *Daily Floor Report*.

Revising reporting of political contributions and expenditures

HB 1616 by Geren (Estes)

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DIGEST:

HB 1616 would have added to the information required on campaign finance reports filed with the Texas Ethics Commission. Reports would have had to include the following amounts received or expended during the reporting period:

- the amount of political expenditures that in the aggregate exceeded $100;
- the total amount or a specific listing of political expenditures of $100 or less;
- any credit, interest, rebate, refund, reimbursement, or return of a deposit fee resulting from use of a political contribution or an asset purchased with a political contribution that exceeded $100;
- any proceeds of the sale of an asset purchased with a political contribution that exceeded $100;
- any investment purchased with a political contribution that exceeded $100; and
- any other gain received from a political contribution that exceeded $100.

The reports would have had to include the name and address of each person from whom one of the amounts was received, the date it was received, and the purpose for which it was received.

A semiannual report amended less than eight days after the original report was filed would have been considered timely filed. A report amended on or after the eighth day after the original filing would have been considered timely filed if the amendment was made before a complaint was filed and the original report was made in good faith without an intent to mislead. A filer would not have been subject to criminal penalty for filing violations under these circumstances.

Filers would have been allowed to correct a report within 14 business days of receiving notice of a complaint filed with the commission if the original report was made in good faith with no attempt to mislead. If a filer corrected a report within 14 days after receiving notice of a complaint alleging the report had not been properly filed, the commission would have had to dismiss the complaint if the original report had been made in good faith and without intent to mislead or misrepresent the information in the report.

GOVERNOR'S REASON FOR VETO:

"Although House Bill 1616 contains several commonsense changes to Texas' campaign finance reporting statutes, an amendment added late in the process would inadvertently cripple the Texas Ethics Commission's authority to enforce compliance with state campaign finance laws.

"The amendment's author requested a veto of House Bill 1616. I urge the Texas Legislature to closely examine our system of campaign finance reporting during the Ethics Commission's upcoming Sunset Commission review and craft legislation that will continue and improve our state's 20-year history of open, honest and efficient campaign finance reporting."

RESPONSE:

Neither **Rep. Charlie Geren**, the bill's author, nor **Sen. Craig Estes**, the Senate sponsor, had a comment on the veto.

NOTES:

Art. 76 of SB 1 by Duncan, the omnibus fiscal matters bill enacted by the 82nd Legislature in its first called session, contains provisions similar to those in HB 1616. The bill includes the provisions from HB 1616 that require additional information to be included in campaign finance reports, including amounts received or expended during the reporting period that exceed $100; that address complaints about certain information contained in political reports; and that authorize candidates or officeholders who are respondents in a complaint to designate an agent to communicate with the Ethics Commission.

The HRO analysis of HB 1616 appeared in Part Four of the May 4 *Daily Floor Report*.

Commissioners court regulation of roadside vendors

HB 1768 by Muñoz (Hinojosa)

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DIGEST:

HB 1768 would have allowed a commissioners court in a county with a population of more than 450,000 to regulate the sale of items by a vendor, the building of a structure by a vendor, or the solicitation of money on a public highway or road, a right-of-way, or a parking lot in an unincorporated area of the county. The current population threshold for this county regulatory authority is 1.3 million. A county with a population of less than 3.3 million (all counties but Harris) would have been prohibited from regulating the sale of livestock.

GOVERNOR'S REASON FOR VETO:

"HB 1768 would encroach upon the rights of private enterprise and property owners while fundamentally altering and expanding the role of county government. HB 1768 would allow the commissioners court of a county with a population of 450,000 or more to regulate vendors in the right-of-way of a public road or highway, and in a parking lot.

"It would be unfortunate if, through regulation, we unintentionally prevented, for example, the owner of a peach orchard with baskets of fruit or a Girl Scout troop with cartons of cookies from reaching their consumers. As a state, we should not raise barriers of entry into the marketplace, stifle competition or hinder the entrepreneurial spirit.

"Because I appreciate the goal of HB 1768 to protect the health and safety of the public on our roadways, I am directing the Texas Department of Public Safety and the Texas Department of Transportation to work together with county governments to assist them in fully utilizing the existing tools at their disposal to balance public safety and free enterprise."

RESPONSE:

Rep. Sergio Muñoz, Jr., the bill's author, said: "HB 1768 was vetted through the entire legislative process and we feel that the bill would have improved the public safety in certain unincorporated areas of larger counties. The bill as passed by the Legislature allowed existing regulatory practices of the largest Texas counties (current law allows counties of 1.1 million or more the option to regulate certain roadside vendors) to be granted to other large urbanizing counties of 450,000 or more.

"It is with regret that HB 1768 will not be able to help my county of Hidalgo, which had brought the need for the bill to our attention as a high priority in its legislative agenda. Hidalgo County is one of the fastest growing and urbanizing counties in the country and is experiencing growing pains in the unincorporated areas of the county,

where very little oversight is in place for quality growth, development and safety. HB 1768 would have provided a tool to counties to improve the quality of growth and the public health and safety of our constituency in Deep South Texas.

Sen. Juan Hinojosa, the Senate sponsor, said: "This issue was brought to us by our constituents in Hidalgo County and was part of the Hidalgo County legislative agenda for this session. We were trying to address the health and safety concerns that accompany certain types of roadside vendors, not prevent Girls Scout troops from selling their cookies or 'hinder the entrepreneurial spirit.' The legislation was directed towards vendors utilizing public property, which is much different than the Girl Scouts selling cookies in front of HEB and/or Wal-Mart (private property) or farmers selling fruit in front of their homes or ranches."

NOTES: HB 1768 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

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

HB 2327 by McClendon (Wentworth)

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DIGEST:

HB 2327 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, El Paso, Tarrant, 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 the lower of 15 mph greater than the speed of vehicles on the adjacent highway lanes or 35 mph. 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.

The bill would have required the program to include bus driver safety training, public awareness and education, operating rules that required bus drivers to yield to passenger cars and emergency vehicles, and road signs and pavement markings indicating that affected lanes were reserved for public transit motor-bus-only use. It also would have allowed TxDOT to cancel the program upon finding evidence of a trend of increasing vehicle accidents attributable to operation of buses under the program.

GOVERNOR'S REASON FOR VETO:

"House Bill 2327 would allow transit buses to use highway shoulders to pass traffic backups during peak traffic hours in certain urban counties. Currently, highway shoulders may only be used by motorists to pull out of the main lanes of the roadway in the case of a mechanical malfunction or emergency, and to allow the bypass of traffic by emergency vehicles.

"House Bill 2327 is similar to Senate Bill 434, which I vetoed in 2009. While there are new provisions in this bill that attempt to address concerns, including additional training for bus drivers and a provision allowing the Texas Department of Transportation to suspend the program in some instances, allowing highway shoulders to be used by transit buses would leave no emergency lane, confuse drivers as to the purpose of highway shoulders, and endanger motorists, emergency personnel and transit bus passengers."

RESPONSE:

Rep. Ruth Jones McClendon, the bill's author, said: "I am disappointed that this bipartisan bill, which has such great support from the local communities, was vetoed. HB 2327 would have created a pilot program that allowed the Texas Department of

Transportation to determine where transit buses could drive on selected highway shoulders during peak traffic hours in Bexar, Travis, Tarrant, and El Paso counties. This is the kind of commonsense pilot program we need to implement, that will reduce traffic congestion in our urban areas and lower daily transportation costs for motorists. Similar programs exist all over the country with proven safety records in places such as Minneapolis/St. Paul, Seattle, Miami, San Diego, Atlanta, Cleveland, Columbus, and Cincinnati.

"In the final analysis, the Texas Department of Transportation would select the sections of highways where the programs would be implemented and would have the ability to suspend the program if it was deemed unsafe. In addition, buses would only be able to travel 15 mph greater than prevailing traffic, with a maximum speed of 35 mph. Traveling at low speeds would allow all drivers adequate time to respond to any traffic conflicts. HB 2327 presented the possibility of decreasing bus travel times and increasing bus ridership with a low infrastructure cost paid completely by the counties' Metropolitan Transit Authorities."

Sen. Jeff Wentworth, the Senate sponsor, said: "Mobility is a major problem in all of the urban areas throughout Texas. Currently, motor buses must use highway lanes to travel even when these lanes are congested, which makes the use of mass transit less functional and appealing. House Bill 2327 is a common sense bill designed as a pilot project in only four of Texas' 254 counties to prove that it will alleviate congestion in those four Texas counties as it has already done in other metropolitan areas around the United States.

"By allowing motor buses to use highway shoulders to bypass congested highway lanes under limited circumstances, the pilot program created by HB 2327 would have allowed the mass transit authorities to operate on a more reliable schedule regardless of traffic and save riders time, which would provide incentives to use public transportation, thereby increasing ridership and generating additional revenue for the transit authorities involved.

"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. Additionally, in an effort to address the concerns of various parties, HB 2327 provided extensive additional safeguards in the pilot program, including bus driver safety training, public awareness and education, bus operating rules requiring bus drivers to yield to passenger cars and emergency vehicles, and roadside signs and pavement markings indicating that affected lanes are reserved for public transit motor-bus-only use. Furthermore, the program and use of the shoulder lanes would have been limited to only public transit motor buses operated by the mass transit entities in the four specified counties. Lastly, and most importantly, a

provision was added to this bill that would have allowed TxDOT to cancel the pilot program at any time upon evidence of a trend of increasing vehicle accidents attributable to operation of buses under the program.

"I believe the governor was short-sighted in vetoing HB 2327. This bill would have created a pilot program in only four of Texas' 254 counties to see how well the proposal worked in these counties to alleviate traffic congestion without large expenditures for new roadways or lanes. Considering the current budget and lack of sufficient transportation funding, we must pursue safe, innovative, and common-sense solutions for alleviating traffic congestion on our Texas roadways."

NOTES:

HB 2327 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

DIGEST:

HB 2403 would have expanded the definition of a retailer engaged in business in Texas, resulting in additional businesses being required to collect and remit sales tax. The definition would have included a retailer holding a substantial ownership interest in, or owned by, an entity with a location in Texas from which business was conducted if:

- the retailer sold the same or a substantially similar line of products as the person with the location in Texas and sold those products under a business name that was the same or substantially similar to the business name of the person with the location in Texas; or

- the facilities or employees of the person with the location in Texas were used to advertise, promote, or facilitate sales by the retailer to consumers or perform any other activity on behalf of the retailer intended to establish or maintain a marketplace for the retailer in Texas, including receiving or exchanging merchandise.

The definition also would have included an entity holding a substantial ownership interest in another entity that had a distribution center, warehouse, or similar location in Texas and delivered property sold by the retailer to consumers.

HB 2403 would have expanded the definition of a seller or retailer to include a person or business who, under an agreement with another person, was:

- entrusted with possession of tangible personal property with respect to which the other person had title or another ownership interest; and

- authorized to sell, lease, or rent the property without additional action by the person having title to or another ownership interest in the property.

The bill would have defined "ownership" as direct ownership, common ownership, and indirect ownership through a parent entity, subsidiary, or affiliate. "Substantial" would have meant an ownership interest of at least 50 percent.

GOVERNOR'S REASON FOR VETO:

"I have serious concerns about the impact and appropriateness of House Bill No. 2403. In particular, I believe this legislation risks significant unintended consequences. My strong preference is to conduct a thorough policy discussion with Texas lawmakers, consumers, retailers and technology experts – and with other

states and even the federal government – about interstate commerce and the structure of state sales taxes in the 21st century. That conversation is underway, and I believe that a consensus can and should be reached that balances the competing interests, respects federalism, and is fair and equitable. I call on the legislature to review this issue further while we reach out to our federal delegation and our friends in other states to build consensus."

RESPONSE: Neither **Rep. John Otto**, the bill's author, nor **Sen. Royce West**, the Senate sponsor, had a comment on the veto.

NOTES: Art. 30 of SB 1 by Duncan, the omnibus fiscal matters bill enacted by the 82nd Legislature during its first called session, includes provisions identical to HB 2403.

HB 2403 was analyzed in the April 26 *Daily Floor Report*.

Continuing DIR; transferring purchasing to Comptroller

HB 2499 by Cook (Nichols)

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DIGEST:

HB 2499 would have continued the Department of Information Resources (DIR) until September 1, 2017. The bill would have transferred the technology commodities purchasing program to the Comptroller's Office. It would have required new DIR board appointments and revised the board's mission and oversight role. The bill would have required management plans for each major outsourced contract and development of a contract management guide. It would have added conflict of interest provisions. HB 2499 also would have required the establishment of consistent methods and criteria for determining administrative fees, appropriate use of outside staff and consultants, and the costs and progress of an information resources technology consolidation initiative. The bill would have required appointment of an internal auditor reporting to the board.

GOVERNOR'S REASON FOR VETO:

"House Bill 2499, the Department of Information Resources sunset bill, contains a number of substantive changes to the operation of the agency, including important ones, such as the hiring of an internal auditor.

"However, House Bill 2499 seems to ignore the progress DIR's new leadership has made in improving agency operations and efficiencies. The bill also undermines executive branch authority by removing a single state agency from data center consolidation, removing qualified and hardworking board members from their positions without cause, and removing DIR's important procurement function during the ongoing re-procurement of data services.

"I do not take lightly the impact this veto could have on the future of important state information resources functions. Therefore, I have asked the legislature to include legislation during the ongoing special session to extend DIR operations through 2017.

"I also request DIR to closely examine the Sunset Commission report, as well as House Bill 2499, to help implement additional operational improvements, and to work closely with its agency customers and experts in the Office of the Comptroller of Public Accounts and Office of the Attorney General, to constantly improve procurement efficiency and effectiveness."

RESPONSE:

Rep. Byron Cook, the bill's author, said: "The governor's last-minute veto of House Bill 2499 represents a lost opportunity for Texas and shows a deep lack of understanding of the bill — a bill that passed the Senate by a vote of 31-0 and the House of Representatives by a vote of 144-2. The Legislature did not 'ignore progress DIR's new leadership has made' as stated in the veto, but was duty-bound to address the reality of DIR's significant and continuing problems.

"When an agency's board fails to properly oversee the actions of its employees by allowing staff to approve the $863 million data center contract, which subsequently failed, the Legislature must act. Yet the veto claims that the bill 'removed qualified and hardworking board members from their positions without cause.' Instead, the bill set necessary experience and expertise requirements for board members and told them to get involved in overseeing major purchases and contracts.

"When methods of buying computers and similar technology items appear to benefit vendors more than the agencies and local governments buying them, and do not ensure the lowest prices for the state, the Legislature must act. Yet the veto states that the bill 'removes DIR's important procurement function during the ongoing re-procurement of data services.' This statement fails to consider that the re-procurement of the problematic data services contract is completely separate from DIR's purchasing program and transferring the purchasing program would in no way impact the re-procurement of the contract.

"When state agencies are spending more taxpayer dollars to comply with a data center consolidation process that was designed to save money, the Legislature must act. Yet the veto claims that 'the bill also undermines executive branch authority by removing a single state agency from data center consolidation.' However, this agency had identified an alternative to consolidation that was estimated to save about $1 million over three years, a savings of almost 50 percent.

"The governor's veto of HB 2499 entirely abolished a completely inefficient agency, which has cost taxpayers too much money for way too long — and for that I applaud him. However, his veto statement asks the Legislature to extend DIR operations through 2017. Why would the governor want the Legislature to provide the opportunity for an unproductive and costly agency to continue without contemplating any of the cost saving measures that were in the legislation he vetoed?"

Sen. Robert Nichols, the Senate sponsor, said: "The governor's veto ignores a wide variety of problems identified with the Department of Information Resources as identified by the Sunset process. While the new leadership may lead DIR in a better

direction, they need the tools and direction from the Legislature that were provided by HB 2499. These tools include the use of an internal auditor, the establishment of a clear fee structure for services, increased board oversight and the development of a methodology to report cost savings. Additionally, a customer advisory committee as required by the bill would give agencies that must use DIR's services a direct way to communicate with the DIR board. Finally, the governor's recommendation that the agency be continued for six years without a Sunset review is unacceptable. By vetoing a Sunset bill, the governor assumes the Legislature will find a way to continue the agency. Assuming the Legislature does continue the agency, we should require a Sunset review the very next session."

NOTES:

Art. 23 of SB 1 by Duncan, the omnibus fiscal matters bill enacted by the 82nd Legislature during its first called session, extended DIR's Sunset date to September 1, 2013. Art. 23 directs the Sunset Advisory Commission to make any recommendations to the 83rd Legislature concerning DIR and does not limit the Sunset review of DIR to the appropriateness of recommendations made by the commission to the 82nd Legislature.

The HRO analysis of HB 2499 appeared in the April 15 *Daily Floor Report*.

DIGEST:

HB 2608 would have continued the Texas Department of Housing and Community Affairs (TDHCA) until September 1, 2023. It would have required TDHCA to make changes to the administration of the housing tax credit program, the manufactured housing installation inspection program, the penalty appeals hearing process, and manufactured housing licensing requirements.

The bill also would have required TDHCA or an agency identified by the governor, in consultation with TDHCA, the Texas Department of Rural Affairs (TDRA), the governor, and other governmental entities, to develop a long-term disaster recovery plan to administer money received for disaster recovery from the federal government or any other source. The bill would have required that the plan establish or identify the method for distributing disaster relief funding to local areas, guidelines for outreach to program applicants and eligible housing and infrastructure activities, and procedures for coordination among federal, state, and local entities.

The plan would have had to be updated biennially and approved by the governor, who would have had to designate a state agency as the primary agency in charge of coordinating the distribution of long-term disaster recovery funding. It also would have required the development of housing reconstruction demonstration pilot programs for three areas that were affected by one of the three most recent federally declared natural disasters.

GOVERNOR'S REASON FOR VETO:

"House Bill 2608 is the sunset bill for the Texas Department of Housing and Community Affairs (TDHCA). This bill would adopt the majority of the changes recommended by the Sunset Commission, most of which are technical clarifications on administrative procedures. The bill would continue the operations of the agency until 2023.

"However, overly prescriptive language was added to House Bill 2608 that would impose a new layer of bureaucracy that makes unrealistic demands of the state, delay assistance to communities hit by disasters and duplicate disaster planning conducted by the Texas Division of Emergency Management.

"While this language may have been well-intentioned, in many instances it would require the state to issue plans for expenditure of federal disaster recovery funds before federal agencies have announced the rules governing the expenditure of those funds.

"I do not take lightly the impact this veto may have in potentially shutting down TDHCA over the next year. That is why I have asked the legislature during this special session to amend language in pending legislation to continue the operation of TDHCA."

RESPONSE:

Rep. Linda Harper-Brown, the bill's author, said: "As a member of the Sunset Commission, we concluded that Texas has an ongoing need for the functions of TDHCA, particularly in disbursing federal funds. It was also noted, however, that changes are needed to improve several of the agency's programs.

"We worked hard during the regular session to craft a bill that not only continued the Texas Department of Housing and Community Affairs, but also improved the functions carried out by the agency.

"While I am disappointed by the governor's veto of the bill, I am working closely with the governor and members of the House to ensure that key components of the bill, including continuation of the agency, are included in legislation being considered during the special session. I am pleased that this approach will allow us to preserve some of these reforms so the agency can better serve the state."

Sen. Juan Hinojosa, the Senate sponsor, said: "SB 1 includes language that restores TDHCA for an additional 2 years (TDHCA will again undergo Sunset review during the interim). The TDHCA language in SB 1 does not include disaster recovery planning, a key component of the bill crafted with substantial input from the Governor's Office.

"While the governor's proclamation states that language added to HB 2608 would impose a new layer of bureaucracy which makes unrealistic demands of the state, the net effect of vetoing his office's main contribution to HB 2608 delays assistance to communities hit by disasters and does not eliminate duplicate disaster planning conducted by the Texas Division of Emergency Management. As of today, victims of Hurricanes Dolly and Ike continue to wait for state and federal assistance dollars necessary to rebuild their homes and communities.

"HB 2608 would have allowed the governor full authority to appoint a lead agency to implement a disaster recovery plan — authority requested by the Governor's Office. The veto leaves Texas without a lead agency to coordinate receipt and distribution of federal disaster recovery aid. Also, HB 2608 would have allowed

city and county officials expanded access to plan development, facilitating the development of a universal methodology for resource distribution."

NOTES:

Art. 74 of SB 1 by Duncan, the omnibus fiscal matters bill enacted by the 82nd Legislature during its first called session, extended the Sunset date for TDHCA to September 1, 2013. Art. 74 also included certain changes in the low-income housing tax credit program and manufactured housing licensing and inspection requirements that are identical to provisions in HB 2608.

HB 2608 was analyzed in Part 1 of the May 2 *Daily Floor Report*.

Allowing criminal records expunction if no prosecution

HB 2889 by Madden (Hinojosa)

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DIGEST:

HB 2889 would have expanded the circumstances under which a person was entitled to have a criminal record expunged to include if a prosecutor had declined to prosecute the offense and did not object to an expunction after receiving notice of a request for expunction of all records and files relating to an arrest.

GOVERNOR'S REASON FOR VETO:

"House Bill 2889 creates a potential conflict with other bills related to the expunction of a person's arrest in a criminal history record. The author of House Bill 2889 has requested a veto to avoid this conflict."

RESPONSE:

Rep. Jerry Madden, the bill's author, said: "We had discussions with the governor's office concerning this bill. There were three expunction bills that were passed. The governor's office felt there was a potential for conflict between the bills. Since Rep. Veasey's bill [HB 351] included most of what we wanted, I was okay with that one being signed."

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

NOTES:

The HRO analysis of HB 2889 appeared in the May 5 *Daily Floor Report*.

Extending times between elections for street maintenance sales tax

HB 2972 by T. Smith (Wentworth)

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DIGEST:

HB 2972 would have allowed municipalities to extend the period of time between elections to reauthorize or increase local-option street-maintenance sales taxes from four to eight years. Only those municipalities in which the prior two consecutive reauthorization or increase elections were approved by more than 66 percent of the vote would be eligible to extend the period. The bill also would have added maintenance and repairs of sidewalks existing at the time of the election to authorized uses of the sales tax revenue.

GOVERNOR'S REASON FOR VETO:

"House Bill 2972 would restrict Texans' power to vote on whether to maintain or increase a street maintenance tax. House Bill 2972 would allow municipalities to delay voter input by limiting the tax elections to once every eight years rather than the current four-year period. Texans should have the right to vote on tax measures sooner rather than later."

RESPONSE:

Rep. Todd Smith, the bill's author, said: "Governor Perry vetoed HB 2972 because he said, in part, that this legislation 'would restrict Texans' power to vote.' I respectfully disagree with Governor Perry about HB 2972. I believe this bill was a fiscally conservative bill that would — in certain limited circumstances — save taxpayers money during these extremely tough economic times.

"This bill gave our local municipalities the option to save taxpayers money by holding a street maintenance tax reauthorization election every eight years, instead of every four years, but only if certain conditions have been met. Currently, the tax has to be initially approved by local voters and then reauthorized every four years.

"HB 2972 gave local elected officials the option of extending the period between reauthorization elections to once every eight years but only if the local electorate had approved the initial levy and reauthorized it twice with at least 66 percent of the voters approving the reauthorization of the tax levy. If these conditions had not been met, the time between reauthorization elections would remain as it is — once every four years.

"HB 2972 was not controversial in either the House or the Senate. It was approved on a 145-5 vote in the House and was unanimously approved in the Senate. I am sorry that Governor Perry chose to veto this bill, which had broad support from cities and representatives all across Texas. While I respect the governor's constitutional right to veto legislation as he deems prudent, I believe the bill gave our cities another

option to save taxpayers from incurring the cost of an election every four years, under the limited circumstances where multiple prior elections had established that the street maintenance tax enjoyed the support of a super majority of the community."

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 141-5-1. 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.

"In 2001, the Legislature authorized the 'street maintenance sales tax' which gave cities the option to put before voters a local sales tax to repair and maintain existing roadways. Nearly 200 cities have seen voter approval on taxes for street maintenance. Currently, under Section 327.007 of the Tax Code, the municipal sales and use tax must be reauthorized by voters every four years.

"HB 2972 would have allowed cities that have voted at least twice and by at least a 66 percent vote margin in each of those elections to be able hold elections to continue the 'street maintenance sales tax' every eight years, instead of every four years. Local elections cost taxpayers significant dollars; by permitting a longer reauthorization period on a historically approved tax, cities would be able to save valuable taxpayer dollars.

"A significant feature of HB 2972 was adding that sidewalks could be maintained and repaired using these funds, just like municipal streets. The statute is currently not clear regarding sidewalks and would have been codified as an acceptable expenditure.

"House Bill 2972 does not create or increase a tax rate, and voter approval is still necessary to implement a 'street maintenance sales tax.'"

NOTES: HB 2972 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Creating urban agricultural promotion programs

HB 2996 by Miles (Estes)

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DIGEST:

HB 2996 would have created the Texas Urban Agricultural Innovation Authority, the Urban Farmers Interest Rate Reduction Program, and the Urban Farmer Grant Program within the Texas Department of Agriculture to promote the creation and expansion of urban agricultural projects in Texas through low-interest loans and grants.

GOVERNOR'S REASON FOR VETO:

"House Bill 2996 would have created the Texas Urban Agricultural Innovation Authority, Urban Farmer Interest Rate Reduction Program and Urban Farmer Grant Program in the Texas Department of Agriculture (TDA). At a time when state agencies have been asked to tighten their belts in response to difficult budget times, House Bill 2996 would likely necessitate an entirely new division within TDA. While the Texas Urban Agricultural Innovation Authority is not appropriated state funds, it is given broad power and would likely require substantial agency staffing."

RESPONSE:

Rep. Borris Miles, the bill's author, said: "I am surprised and disappointed in the governor's veto of HB 2996, which would have promoted, created and expanded urban agricultural projects through low interest loans and grants. The governor claims that HB 2996 would require substantial agency staffing, but the bill's fiscal note clearly states that there would be no fiscal impact to the state and that the requirements of the bill could be implemented with current resources. My office worked with the Texas Department of Agriculture on language to the bill which clearly reads that 'state money may not be used for purposes of the authority.'

"Urban agriculture, I believe, can be a major ingredient in the solution to three major epidemics not only affecting my district but other urban areas throughout this state: lack of economic development activity, lack of access to fresh fruits and vegetables, and health-related problems such as obesity and diabetes. Urban farms provide opportunity for the creation of small businesses in our cities that will not only complement but expand agricultural production in Texas. Urban farms also combat the numerous and massive 'food deserts' growing in these communities by providing access to locally grown fresh foods. It's disappointing that Texas will miss out on the opportunities that could have been created by this bill."

Sen. Craig Estes, the Senate sponsor, had no comment on the veto.

NOTES:

HB 2996 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

DIGEST:

HB 2997 would have created the Select Committee on Urban Farming and the Urban Farming Pilot Program through which the Texas Department of Agriculture (TDA) would have awarded grants to establish new urban farms and expand existing ones. TDA would not have been required to implement the program unless it had sufficient funding from a source other than an appropriation of general revenue. State money could not have been used for purposes of the program.

GOVERNOR'S REASON FOR VETO:

"House Bill 2997 would create the Select Committee on Urban Farming and the Urban Farming Pilot Program, to be administered by the Texas Department of Agriculture (TDA). While the goals of the pilot program are laudable, creating new unfunded programs in TDA at a time when the agency's budget is being significantly cut is neither responsible nor acceptable. The select committee's tasks can be addressed by the Senate and House Agriculture committees through interim studies in preparation for the next legislative session."

RESPONSE:

Rep. Borris Miles, the bill's author, said: "I am disappointed in the governor's veto of HB 2997, which would have created an Urban Farm Pilot Program and created a Select Committee on Urban Farming to conduct a study and provide recommendations to the legislature. The governor's claims that the pilot program and select committee would have created unfunded programs within the Texas Department of Agriculture (TDA) are without merit. The bill's fiscal note clearly states that there would be no fiscal impact to the state and that the requirements of the bill could be implemented with current resources. My office worked with TDA, and the language of the bill does not allow state money to be used for the pilot program and would have solicited dollars from grants and donations from other public and private sources. And while an interim study on urban agriculture is possible, there is no guarantee that one would be done.

"Urban agriculture, I believe, can be a major ingredient in the solution to three major epidemics not only affecting my district but other urban areas throughout this state: lack of economic development activity, lack of access to fresh fruits and vegetables, and health-related problems such as obesity and diabetes. Urban farms provide opportunity for the creation of small businesses in our cities that will not only complement but expand agricultural production in Texas. Urban farms also combat the numerous and massive 'food deserts' growing in these communities by providing

access to locally grown fresh foods. It's disappointing that Texas will miss out on the opportunities that could have been created by this bill."

Sen. Craig Estes, the Senate sponsor, had no comment on the veto.

NOTES:

HB 2997 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Contracts between artists and promoters for live performances

HB 3125 by Thompson (Patrick)

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DIGEST:

HB 3125 would have required promoters and artists who have entered into a contract regarding a live performance to comply with the terms of the contract concerning the distribution of recording revenue or event proceeds between the promoter and artist and to agree to and secure permission for the recording of the live event in writing before the event was recorded.

GOVERNOR'S REASON FOR VETO:

"House Bill 3125 would require promoters and artists to comply with the terms of a contract for the distribution of recording revenue or event proceeds for a performance at a live entertainment event. The promoter and artist also would be required to agree to and secure permission in writing for the recording of a live entertainment event before it is recorded.

"It is unnecessary to enact legislation to require two private parties to comply with a contract that the parties have freely entered into themselves. Existing contract law more aptly applies to such agreements, and in the event of a contractual dispute, there are more appropriate forums to resolve disagreements between the parties. Furthermore, this bill ambiguously places its requirements among criminal offenses and penalties."

RESPONSE:

Rep. Senfronia Thompson, the bill's author, had no comment.

Sen. Dan Patrick, the Senate sponsor, was unavailable for comment.

NOTES:

HB 3125 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Revising the Texas Guaranteed Student Loan Corporation

SB 40 by Zaffirini (Callegari)

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DIGEST:

SB 40 would have revised the Texas Guaranteed Student Loan Corporation (TGSLC) to allow it to continue to provide programs, services, and administrative functions to conform to modified federal student loan programs. The bill would have continued TGSLC's authorization to serve as the state's designated student loan guaranty agency and authorized it to continue to service the existing federal student loan portfolio.

The bill would have removed the comptroller from the board of directors and increased from four to five the number of members who had to be members of the faculty or administration of a postsecondary educational institution, for a total of 11 directors. The governor would have designated the chairman from among the board's membership.

The bill would have allowed board members to attend meetings by telephone conference call as long as a quorum was present at one of the physical locations of the meeting and the meeting was open and accessible to the public. The bill would have included conflict of interest requirements for board members. It would have required TGSLC to have an internal corporate career ladder, an ombudsman, and enhanced training for board members.

TGSLC would have been authorized to engage in other revenue-generating activities, including with the U.S. Department of Education, the state or any agency, instrumentality, or political subdivision of the state, eligible higher education institutions, or other eligible entities if the board had determined that the activity was consistent with the TGSLC's purpose and if revenue from the activity would have covered its costs and enabled TGSLC to support education services allowed by current law.

The state auditor would have been required periodically to review TGSLC's activities. SB 40 would have subjected TGSLC to the Texas Sunset Act, and unless continued, it would have been abolished September 1, 2013. TGSLC would have been required to report to the Legislature and the Legislative Budget Board by December 1 of each even-numbered year about the corporation's revenue-generating activities.

GOVERNOR'S REASON FOR VETO:

"Senate Bill 40 would make a number of changes to the enabling statute of the Texas Guaranteed Student Loan Corporation (TGSLC), a state-chartered nonprofit corporation that serves as the guarantor for subsidized student loans originated under the Federal Family Education Loan Program (FFELP). FFELP was terminated last year by the federal government.

"Many of the changes in Senate Bill 40, such as allowing TGSLC board members to attend meetings via teleconference or requiring TGSLC to appoint an ombudsman for internal complaints, are good for TGSLC and the state. However, their benefits are outweighed by other parts of the bill.

"Senate Bill 40 gives TGSLC much broader authority to enter into revenue-generating activities, but does so at a time when the TGSLC loan portfolio will shrink, limiting the resources available for new ventures and exposing TGSLC's operating fund to additional risk.

"TGSLC also faces uncertainty at the federal level. TGSLC is a strong guarantor, but it would be unwise to commit scarce resources without additional clarity as to future policies regarding guarantors and the residual FFELP portfolio.

"Senate Bill 40 also contains language regarding the governor's appointments to TGSLC that conflicts with TGSLC language in other bills that are moving toward passage in the special session."

RESPONSE:

Sen. Judith Zaffirini, the bill's author, said: "SB 40 represented a consensus-driven approach to ensuring that the Texas Guaranteed Student Loan Corporation (TG) was repurposed appropriately in light of the termination last year of the Federal Family Education Loan Program (FFELP).

"SB 40 contained numerous changes to the enabling statute of TG that would have been beneficial to the state, such as: (1) clarify that TG is subject to the open meetings and public information laws of the state, (2) require the training program for TG board members to include information regarding separation of policymaking and management responsibilities as well as any applicable ethics policies, and (3) clarify that TG may invest its operating funds only in accordance with the Texas Public Funds Investment Act.

"Current law allows TG to enter into any revenue-generating activity that the corporation deems as consistent with TG's purposes if the activity is determined by the TG board to be (1) sufficient to cover the cost of the activity and (2) may contribute to a reduction in the insurance premium paid by students under Section 57.43 of the Education Code.

"The governor was ill-advised to veto SB 40 on the basis that it would give TG 'broader authority to enter into revenue-generating activities.' SB 40 required that the TG board (not the corporation) determine whether a revenue-generating activity

is consistent with TG's purposes. SB 40 further required the TG board to determine whether revenue-generating activity was sufficient to cover the costs of the activity (including opportunity costs) and whether revenue from the activity would enable TG to support educational purposes.

"Moreover, under SB 40, revenue-generating activity would have been limited to contracts entered into by TG and any of the following: the U.S. Department of Education; any entity to which the U.S. Department of Education has awarded one or more contracts to provide services under Title IV of the Higher Education Act of 1965; and any state agency, political subdivision, or eligible institution of higher education that is eligible to participate in a program under Title IV of the Higher Education Act of 1965.

"Several other aspects of SB 40 would have addressed the governor's additional concerns regarding TG's limited resources and uncertainty 'as to future policies regarding guarantors and the residual FFELP portfolio.' Under SB 40, for example, TG was required to be reviewed by the Texas Sunset Commission in 2013 rather than in 2017, which would have allowed TG a two-year window to operate under its repurposed enabling statute before coming under further scrutiny by the Legislature. In addition, under SB 40, TG was required to submit a written report to the Texas Legislature and Legislative Budget Board not later than December 1 of each even-numbered year regarding participation in revenue generating activities. This bill also required the State Auditor to conduct a periodic review of TG to ensure compliance and consistency with its enabling statute.

"I am deeply disappointed that Governor Rick Perry ignored the will of an overwhelming majority of the Senate and House of Representatives in issuing a veto of SB 40. My staff worked closely with all stakeholders in developing this legislation, including the governor's office staff, legislative leadership, and the higher education community."

Rep. Bill Callegari, the House sponsor, had no comment on the veto.

NOTES: SB 40 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Expunction of arrest records after pardon or other relief

SB 167 by West (Veasey)

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DIGEST:

SB 167 would have expanded the circumstances that allowed for expunction of criminal records after a person had been convicted to include persons granted relief on the basis of actual innocence, in addition to current law allowing expunctions for someone who has been pardoned. SB 167 also would have created a mandatory procedure for courts and prosecutors to follow to expunge records for those convicted and then pardoned or granted relief on the basis of actual innocence.

GOVERNOR'S REASON FOR VETO:

"Senate Bill 167 suffers from technical citation problems and a need to correct language. House Concurrent Resolution 177, which sought to correct the problems in Senate Bill 167, did not pass both houses. The intent of Senate Bill 167 is covered in House Bill 351."

RESPONSE:

Sen. Royce West, the bill's author, said: "We first introduced the language of SB 167 during the 81st legislative session in 2009 (SB 1916) because we felt then, as now, that it was the right and fair thing to do. SB 167 would provide assistance to persons found innocent of a crime for which they were initially (and wrongfully) convicted. Under the bill, a person petitioning for expunction of the records related to the conviction for which they were later exonerated would be represented by the district or county attorney.

"Although found innocent and later exonerated of all charges, the records related to the offense of conviction still exist and remain in the public domain unless the expunction of those records takes place. Our idea was that this person who has already been deprived of his liberties, the result of a wrongful conviction, should not also be burdened with the costs of legal representation in having those records removed.

"In working closely with our House sponsor, we were able to carry the language of SB 167 in a separate bill, HB 351. Our colleagues in the Senate and House have shown overwhelming support for the intent of SB 167 over two legislative sessions. In the final days of the 82nd regular session, it was discovered that an omission was made in correcting the language of SB 167 to match the House bill that I sponsored. We understand that the veto was issued so as not to have conflicting language on the same subject pass into law. In the end, we believe that the best interest of all, and especially those who have suffered a wrongful conviction, have been served."

Rep. Marc Veasey, the House sponsor, had no comment on the veto.

NOTES:

SB 167 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Role of Texas Medical Board in contested case hearings

SB 191 by Nelson (S. King)

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DIGEST:

SB 191 would have required the Texas Medical Board to dispose of a contested case by issuing a final order based on the administrative law judge's findings of fact and conclusions of law. SB 191 would have prohibited the board from changing a finding of fact or conclusion of law or vacating or modifying an order of the administrative law judge.

The board could have obtained judicial review of any finding of fact or conclusion of law issued by the administrative law judge under current law governing hearings conducted by the State Office of Administrative Hearings. The board would have had the sole authority and discretion to determine the appropriate action or sanction. The administrative law judge could not have made any recommendation on the appropriate action or sanction.

GOVERNOR'S REASON FOR VETO:

"I am vetoing Senate Bill 191 because I have serious concerns regarding overreliance on the State Office of Administrative Hearings (SOAH) in the disposition of contested case hearings at the Texas Medical Board. This provision is also included in House Bill 680.

"The board is charged with regulating the practice of medicine in Texas by, among other things, enforcing physicians' standards of conduct and imposing appropriate sanctions when those standards are violated. When the board is unable to resolve a case, it is referred to an administrative law judge (ALJ) at SOAH. Senate Bill 191 requires the board to accept an ALJ's findings of fact on whether a physician has committed a violation.

"This provision weakens the board's authority to oversee physicians, and vests that authority instead in the ALJ. This bill treats the Texas Medical Board differently from every other occupational licensing agency by mandating that the board accept the ALJ's findings.

"The responsibility for deciding whether a physician has violated a standard of conduct should belong to the multimember board, and not to a single ALJ. ALJs serve the important role of providing an independent forum for conducting adjudicative hearings to determine the facts, but their role is to assist agencies in reaching a proper decision, not to supplant them or relieve them of that duty."

RESPONSE: Neither **Sen. Jane Nelson**, the bill's author, nor **Rep. Susan King**, the bill's House sponsor, had a comment on the veto.

NOTES: The language in SB 191 also was included in HB 680 by Schwertner, which was signed by the governor on June 17 and will take effect September 1, 2011.

SB 191 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Inspection, operation of watercraft on John Graves Scenic Riverway

SB 408 by Estes (Keffer)

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DIGEST:

SB 408 would have required the Texas Commission on Environmental Quality to establish a rule prohibiting the commercial or recreational use of hovercraft and certain watercraft that used an aircraft-type propeller for propulsion on the waters of the John Graves Scenic Riverway, except when used for visual inspection of the waterway or for law enforcement purposes. Violation of the rule would have been a class C misdemeanor (maximum fine of $500).

SB 408 also would have required a visual inspection from an aircraft flying over the John Graves Scenic Riverway to be conducted at least once in a winter month and at least once in a summer month. A visual inspection and the drawing of water samples for testing would have been required from the surface of the riverway at least once in a spring month and at least once in a fall month.

GOVERNOR'S REASON FOR VETO:

"Senate Bill 408 includes a provision that would prohibit the use of boats or other crafts that use an aircraft-type propeller for propulsion on approximately 113 miles of the John Graves Scenic Riverway. Attempting to balance private property rights with water conservation and recreational use of this riverway is laudable. However, I am vetoing Senate Bill 408 at the request of the bill's sponsor, and I am directing the Texas Parks and Wildlife Department and the Texas Commission on Environmental Quality (TCEQ) to study and report the potential effects of a prohibition of the commercial or recreational use of these types of boats on the riverway. This review will be part of TCEQ's biennial report to the legislature."

RESPONSE:

Sen. Craig Estes, the bill's author, said: "I agree with Governor Perry's veto of Senate Bill 408 on the grounds that further study is warranted, and I still believe that preserving the John Graves Scenic Riverway is vitally important for future generations. Environmental preservation and economic activity are not mutually exclusive."

Rep. Jim Keffer, the House sponsor, said: "I appreciate Governor Perry's veto of Senate Bill 408. I believe this topic merits further examination in an environment where citizens on both sides can discuss their opinions on how best to protect this natural treasure."

NOTES:

SB 408 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Procedures for dissolving Hidalgo County Water Improvement District No. 3

SB 978 by Hinojosa (V. Gonzales)

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DIGEST:

SB 978 would have dissolved the Hidalgo County Water Improvement District No. 3 on the effective date of the bill or the date a transfer ordinance was adopted by the city of McAllen and took effect under the bill, whichever was later. The city of McAllen would have been able to propose an ordinance allowing it to accept a transfer of the obligations, liabilities, and assets of the Hidalgo County Water Improvement District No. 3 if the city council found that certain conditions had been met. Before McAllen could have proposed a transfer ordinance, it would have had to conduct a public hearing on the issue. The ordinance would have taken effect only if two-thirds of the city council voted in favor of it.

The voters of the district and of the city of McAllen would have been able to object to the ordinance by filing a petition with the secretary of the city. It would have had to be signed by at least 5 percent of the combined total of registered voters residing in the city or any part of the district outside the city and filed no later than 30 days after the city council voted in favor of the transfer ordinance. On receipt of the petition, the city council would have had to suspend the ordinance. The city could not have taken action under the ordinance unless it was approved by the voters. If the city council had not repealed the transfer ordinance, it would have had to submit a proposition for or against its enactment to the voters at an election held jointly by the city and district on the next uniform election date. The transfer ordinance would have taken effect if a majority of the voters voted in favor of the transfer.

GOVERNOR'S REASON FOR VETO:

"Senate Bill 978 would allow the entire City of McAllen and members of Hidalgo County Water Improvement District No. 3 to vote for the dissolution of the district. This bill puts the district at a clear disadvantage because the overwhelming majority of votes would come from outside the boundaries of the district, effectively allowing the city to take the district's water rights and property. This would set a troubling precedent."

RESPONSE:

Sen. Juan Hinojosa, the bill's author, said: "I filed SB 978 to address a local concern with the help of stakeholders on the frontlines. Because of the local nature of the bill and its limited effects, SB 978 passed unanimously from the Senate to the House. The Texas House approved the measure 136-5. The five House members who voted against the bill do not represent the Rio Grande Valley.

"The governor's veto is contrary to the principles he represents. As a champion for private property rights, a supporter of lowering the tax burden and a promoter of government efficiency, the governor's decision should have been clear. The Hidalgo County Water Improvement District No. 3 provides water service to

the City of McAllen, which already has its own water delivery infrastructure in place - a redundancy of effort that constitutes a double tax on the residents in my senatorial district. Besides the duplicative bureaucracy and tax burden it creates, the water district places unlawful liens on private property and limits government efficiency due to the extra layers of government added by this bureaucratic relic. Most importantly, the water district is attempting to eradicate the water rights of landowners by selling those rights right from under Texans.

"The water district refuses to submit financial documents for review - something required by statute and that is the responsibility of any agency acting in a fiduciary capacity, and that is simply good government practice. On top of that, the district retained lobbyists to represent them during the legislative session with ratepayers' money even though much of the water delivery infrastructure is in extreme need of repair. This bill addressed the needs of my local community and a local issue that has long been a problem for the taxpayers in Hidalgo County and was a continued attempt to promote government efficiency and effectiveness."

Rep. Veronica Gonzales, the House sponsor, said: "I am very disappointed by the governor's decision to veto SB 978 dissolving Hidalgo County Water Improvement District No. 3, which has outlived its purpose. This was a local bill which was supported by the entire Hidalgo County delegation, passed the Senate unanimously and overwhelmingly passed the House with a 136-5 vote. The only opposition to this legislation came from the Water Improvement District board members, whose questionable practices are acknowledged by the governor's own request for an audit by the State Auditor's Office. Furthermore, this legislation would have advanced the very principles that the governor stands for, such as protecting property rights, increasing government efficiency and protecting the water rights of Texans.

"With regard to the governor's veto statement, his position that 'this bill puts the district at a clear disadvantage' is inaccurate. In fact, an overwhelming majority of the voters allowed to overturn the dissolution live within the boundaries of Water Improvement District No. 3. The governor's preferred voters, those only within the district, would have solidified the board members' practice over the past several years of cherry picking voters by de-annexing those property owners who are not supportive of the district. I also argue the validity of his statement that this bill sets a precedent because there have been numerous bills with nearly identical language dissolving other water improvement districts in the state, including SB 684 (82R), which he has signed into law.

NOTES: The HRO analysis of SB 978 appeared in Part Two of the May 23 *Daily Floor Report*.

Expanded regulation of motor vehicle title service companies

SB 1035 by Williams (Harless)

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DIGEST:

SB 1035 would have expanded the permitting of motor vehicle title service companies by counties and would have created a state licensing requirement to be administered by the Texas Department of Motor Vehicles (TxDMV).

A person would have been prohibited from acting as a motor vehicle title service or service runner without a permit issued by a county, if the county required one, and a license issued by TxDMV. TxDMV would have had to adopt rules to set the term of a license and to deny, suspend, revoke, or reinstate a license. The TxDMV board could have issued a cease-and-desist order to a person in violation of laws or rules governing title services. The bill would have established requirements for license record retention practices for title services. Licensees would have had to make required records available for inspection by certain entities.

The bill would have allowed any county to require a permit to operate as a motor vehicle title service or title service runner. It also would have extended existing laws regulating title services to any county that required a permit for these activities. County-issued motor vehicle title licenses would have been replaced by permits.

GOVERNOR'S REASON FOR VETO:

"Senate Bill 1035 would expand county permitting of motor vehicle title service companies and create a state licensing requirement administered by the Texas Department of Motor Vehicles (DMV). The bill would establish additional criminal and civil penalties, including a state jail felony if a service company violated a license requirement.

"While the state may benefit from the DMV performing a licensing or oversight function, this bill would not address the burden imposed on motor vehicle title service companies by a state licensing requirement, nor would it address the inherent problems of the creation of 254 different county registration processes. The dual state and county registration and licensing procedures, and different associated fees, are too cumbersome.

"Senate Bill 1035 could also have unintended consequences through its definition of a motor vehicle title service company. That definition would include any individual directly or indirectly assisting with the registration process. It would be problematic that a friend or family member who is familiar with the registration process could not assist, if any compensation was received, without being subject to civil and criminal penalties.

"Because I appreciate the goal of Senate Bill 1035, I am requesting the DMV to work with the motor vehicle title service industry and county governments to find a reasonable solution that does not add layers of government, but protects Texans against individuals operating with the intent to defraud consumers or the state."

RESPONSE:

Sen. Tommy Williams, the bill's author, said: "I am baffled by Governor Perry's unexpected veto of a bill with no opposition. Not a single person testified in opposition or registered concerns during extensive committee hearings. The bill was supported by prosecutors and county tax assessors."

Rep. Patricia Harless, the House sponsor, had no comment on the veto.

NOTES:

SB 1035 was analyzed in the May 20 *Daily Floor Report*.

Extending jurisdiction of 444th District Court of Cameron County to Willacy County

SB 1807 by Lucio (Lozano)

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DIGEST:

SB 1807 would have expanded the jurisdiction of the 444th district court in Cameron County to cover Willacy County.

GOVERNOR'S REASON FOR VETO:

"Senate Bill 1807 would allow the 444th District Court of Cameron County to have concurrent jurisdiction in Willacy County. However, this bill was not thoroughly discussed with all affected entities in Willacy and Cameron counties. While I appreciate any attempt to improve the efficiency of Texas courts, all parties affected by this change should be involved in determining the best methods for making such improvements."

RESPONSE:

Sen. Eddie Lucio, Jr., the bill's author, said: "I filed Senate Bill 1807 in response to a resolution signed by members of the Willacy County Commissioners' Court requesting legislation to extend an additional judicial district into the county. I rely on resolutions by local units of government to best serve my constituents with the understanding that all stakeholders have given input into the decision making process."

Rep. J. M. Lozano, the House sponsor, had no comment on the veto.

NOTES:

SB 1807 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

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