HOUSE
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Vetoes of Legislation

84th Legislature

Gov. Greg Abbott vetoed 41 bills approved by the 84th Legislature during the 2015 regular legislative session. The vetoed bills included 32 House bills and nine Senate bills. The governor also vetoed one concurrent resolution.

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 by Otto, the general appropriations act for fiscal 2016-17, and HB 2 by Otto, the supplemental appropriations and reductions act for fiscal 2015, will appear in an upcoming House Research Organization state finance report, *Texas Budget Highlights, Fiscal 2016-17*.

Focus Report: ***Number 84-5***

Contents

Requiring state to pay certain court of inquiry costs
HB 184 by Dale (Schwertner) 7

Requesting assistance and using opioid antagonists following overdose
HB 225 by Guillen (Watson) 8

Changes to the Public Transportation Advisory Committee
HB 499 by Guillen (Garcia) 10

Increasing compensation of certain emergency services commissioners
HB 973 by Hernandez (Garcia) 12

Notification of when a state jail inmate will have served 75 days
HB 1015 by Canales (Hinojosa) 13

Requiring a study on highway mile markers
HB 1119 by Hernandez (Garcia) 15

Reducing certain repeat prostitution penalties and revising offense
HB 1363 by Johnson (Whitmire) 16

Allowing financial institutions to conduct savings promotion raffles
HB 1628 by Johnson (Rodríguez) 18

Notice requirements for permits to drill near TxDOT easements
HB 1633 by Romero (Uresti) 20

Establishing statutory training requirements for correctional officers
HB 1855 by Rose (Whitmire) 22

Automatic enrollment of employees in a deferred compensation plan
HB 2068 by Coleman (Garcia) 24

Reporting of rate methodologies for Medicaid managed care and CHIP
HB 2084 by Muñoz (Hinojosa) 27

Creating the East Houston Management District
HB 2100 by Hernandez (Garcia) 30

Appealing property appraisals in Atascosa County justice courts
HB 2282 by Guillen (Uresti).......... 31

Changes in the process for appointing election judges
HB 2381 by Reynolds (Rodríguez).......... 33

Creating a workers' compensation safety reimbursement program
HB 2466 by Collier (Eltife).......... 35

Delaying curtailment of groundwater use for power generation or mining
HB 2647 by Ashby (Estes).......... 37

Petitions related to a candidate's application for a place on a ballot
HB 2775 by E. Rodriguez (Zaffirini).......... 39

Requiring correctional facilities to observe water conservation measures
HB 2788 by Springer (Perry).......... 41

Limitations on appraised value under certain chapter 313 projects
HB 2826 by Murphy (Huffman).......... 42

Requiring written requests for counties to refund small amounts
HB 2830 by Martinez (Hinojosa).......... 44

Regulating the journeyman lineman license and examination
HB 3043 by S. Thompson (Garcia).......... 45

Enforcement of certain ordinances by a building standards commission
HB 3060 by Anchia (West).......... 47

Victim-offender mediation programs for certain criminal cases
HB 3184 by McClendon (Menéndez).......... 48

Allowing certain cities to consider bidder's location in awarding contracts
HB 3193 by Bernal (Menéndez).......... 49

Criminal penalty for certain transactions of oil, gas, or condensate
HB 3291 by Raymond (Zaffirini).......... 50

Contact information in agreement to allow shooting across property lines
HB 3390 by Larson (Perry).......... 52

Changing the requirements for filing personal financial statements
HB 3511 by S. Davis (Huffman).......... 53

Allowing expunction of criminal records based on offenses, not arrests
HB 3579 by Alonzo (Rodríguez) 54

Revising personal financial statements; disclosing conflicts of interest
HB 3736 by S. Davis (Huffman) 56

Use of energy transportation reinvestment zone funds by counties
HB 4025 by Keffer (Uresti) 58

Additional oath of office for certain municipal court judges
HB 4103 by Guillen (Garcia) 60

Use of diagnostic classification systems for mental health services
HCR 84 by Clardy (Nichols) 61

Requesting criminal record order of nondisclosure if conviction set aside
SB 130 by West (Canales) 62

Revising school curriculum, limiting instructional material adoptions
SB 313 by Seliger (Aycock) 65

Temporary detention of a person with mental illness
SB 359 by West (Workman) 67

Allowing counties to consider bidder's location in awarding contracts
SB 408 by Rodríguez (Blanco) 69

Funding for students in an optional flexible school day program
SB 496 by Watson (Howard) 71

Policies allowing state employees to work from home
SB 1032 by Watson (Israel) 73

Voting-by-mail requirements, including canceling an application
SB 1034 by Rodríguez (R. Miller) 75

Creating a matching grant program for certain federal block grants
SB 1408 by Lucio (T. King) 77

Authorizing THECB to charge fees, maintain transcript repository
SB 1655 by West (Morrison) 78

Requiring state to pay certain court of inquiry costs

HB 184 by Dale (Schwertner)

DIGEST:	HB 184 would have made the state bear all costs associated with a court of inquiry if the subject of the inquiry had been a state officer or employee at the time of the alleged offense. Under current law, the costs are the responsibility of the county where a court of inquiry takes place.
GOVERNOR'S REASON FOR VETO:	"Courts of inquiry are criminal proceedings initiated by a local district judge. Current law appropriately requires the costs of these proceedings to be borne by the county where they take place, just as the costs of other criminal proceedings are largely borne by counties. Because the decision to conduct a court of inquiry rests with a local district judge, it makes sense for the costs of the proceeding to be borne at the local level. House Bill 184 would inappropriately shift these costs to the State in certain cases."
RESPONSE:	Neither **Rep. Tony Dale**, the bill's author, nor **Sen. Charles Schwertner**, the Senate sponsor, had a comment on the veto.
NOTES:	HB 184 was not analyzed in a *Daily Floor Report*.

Requesting assistance and using opioid antagonists following overdose

HB 225 by Guillen (Watson)

DIGEST:

HB 225 would have created a defense to prosecution for certain drug offenses for individuals seeking medical assistance for themselves and others under some circumstances. For a person possessing specified amounts of certain illicit substances or drug paraphernalia, the bill would have created a defense to prosecution if that person:

- was the first to request emergency medical assistance in response to a possible drug overdose, remained on the scene until medical assistance arrived, and cooperated with medical assistance and law enforcement personnel; or
- was the victim of a possible overdose that prompted a request for emergency medical assistance.

The defense to prosecution proposed by the bill would not have been available if, at the time of the request for emergency medical assistance, a peace officer was in the process of arresting the actor or executing a search warrant describing the actor or the place from which the request for medical assistance was made.

HB 225 also would have allowed an authorized person, directly or by standing order, to prescribe or distribute "opioid antagonists" (i.e., drugs that block the effects of narcotic pain medications known as "opioids") to a person at risk of experiencing an opioid-related overdose or to someone in a position to assist that person. Under a valid prescription, a pharmacist could have dispensed an opioid antagonist to such a person or to someone in a position to assist that person. Emergency services personnel would have been authorized to administer an opioid antagonist following an apparent overdose, as clinically indicated. Possession of an opioid antagonist would have been legal with or without a prescription.

A person who, acting in good faith and with reasonable care, did or did not prescribe, dispense, or administer an opioid antagonist, would have been protected against prosecution, liability, or sanction resulting from the outcome of acting or not acting.

GOVERNOR'S REASON FOR VETO:

"HB 225 has an admirable goal, but it does not include adequate protections to prevent its misuse by habitual drug abusers and drug dealers. Although my office suggested amendments to this legislation that would have eliminated the bill's protections for habitual drug abusers and drug dealers — while maintaining protections for minors and first-time offenders — those amendments were not adopted during the legislative process. Consequently, it was necessary to veto this bill."

RESPONSE: **Rep. Ryan Guillen**, the bill's author, said: "This bill provided an opportunity to save lives. At the request of the governor's office, and in an effort to prevent its misuse, we added language to the bill that clarified that the defense to prosecution is valid only during an emergency, doesn't apply to calls made during an arrest or execution of a search warrant, and that it would not preclude admissions of evidence for other crimes."

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

NOTES: The HRO analysis of HB 225 appeared in the April 13 *Daily Floor Report*.

Changes to the Public Transportation Advisory Committee

HB 499 by Guillen (Garcia)

DIGEST: HB 499 would have changed the requirements for the nine-member Public Transportation Advisory Committee appointed by the governor, lieutenant governor, and the speaker of the House. Each appoints three members, who serve until the elected official removes them, including one representative each of public transportation providers, transportation users, and the general public.

The bill would have allowed the representative of the public transportation providers to be employed by a transit provider or organization representing transportation providers but would have prohibited the representatives of transportation users and the general public from being employed by a transit provider or organization representing transportation providers. It would have allowed the representative of the general public to be employed by a metropolitan planning organization or rural transportation planning organization.

The committee members would have served six-year terms, rather than serving at the discretion of the appointing officer. The terms of three members, each appointed by a different elected official, would have expired every odd-numbered year.

GOVERNOR'S REASON FOR VETO: "House Bill 499 unnecessarily limits the field of candidates available for appointment to the Public Transportation Advisory Committee by the Governor, Lieutenant Governor, and the Speaker of the House. The bill also guarantees committee members a term of six years, which eliminates the appointing officers' ability to replace members at any time for poor performance. The appointment limitations in House Bill 499 would impede the appointing officers' ability to provide effective committee members to serve Texas."

RESPONSE: **Rep. Ryan Guillen**, the bill's author, said: "The Public Transportation Advisory Committee (PTAC) has historically been underutilized, having multiple long-standing vacancies. The governor appoints members to almost 300 other entities, the vast majority of which are active, have term expiration dates, and do not have a mechanism to be replaced for poor performance. This bill expands and diversifies candidate opportunity, is consistent with most other appointments, and would have improved this board's performance and effectiveness."

Sen. Sylvia Garcia, the Senate sponsor, said: "I respectfully disagree with Gov. Abbott's conclusion that HB 499 'would impede the appointing officers' ability to provide effective committee members to serve Texas.' The current committee has several vacancies and lacks participation. Diversifying the membership and creating definitive term periods would have led to more oversight by appointing officers

and, in turn, more effective committee members serving Texas. Additionally, HB 499 would not have precluded candidates of any kind from being appointed to the committee. Rather, the bill would have merely ensured the appointment of a diverse membership equally representing all areas of public transportation. I am extremely disappointed that the governor's office did not contact my office about his concerns because, while I believe they were unfounded, they could have easily been addressed had he brought them to our attention."

NOTES: HB 499 was not analyzed in a *Daily Floor Report*.

Increasing compensation of certain emergency services commissioners

HB 973 by Hernandez (Garcia)

DIGEST: HB 973 would have increased the compensation for emergency services commissioners in Harris County. Under current law, the state's emergency services commissioners are entitled to as much as $50 per day for each day they spend performing the duties of a commissioner, up to $3,000 per year. The bill would have entitled Harris County emergency services commissioners to as much as $150 per day for each day they spent performing the duties of a commissioner, up to $7,200 per year.

GOVERNOR'S REASON FOR VETO: "Emergency services districts provide necessary fire and EMS services to unincorporated areas of the state. The commissioners who run these districts on a part-time basis receive modest compensation that is set by statute and is uniform throughout the state. House Bill 973 would more than double the compensation for commissioners in Harris County while leaving all other commissioners throughout the state under the existing compensation limits. This would be an unnecessary expenditure of taxpayer money and an inappropriate departure from the uniform statewide compensation limits currently in effect."

RESPONSE: **Rep. Ana Hernandez**, the bill's author, said: "I am extremely disappointed by the governor's decision to veto critical local control legislation. Emergency services districts in Harris County provide both critical fire control and EMS services to our unincorporated communities, such as Sheldon, Cloverleaf, and Channelview. By not entrusting our emergency services districts to allocate their funds as local manpower needs require, the governor has chosen to play politics with our local emergency services."

Sen. Sylvia Garcia, the Senate sponsor, said: "This bill would have increased emergency services district board pay to match that of the average municipal utility district, a special district with a much smaller scope or purpose than emergency services districts. Additionally, we were asked by our colleagues to bracket the bill to Harris County to keep it local and address increased needs in Harris County. Now, the people of Harris County will suffer because Gov. Abbott has decided to penalize a bipartisan compromise in the Texas Legislature. Lastly, the veto of this local bill is especially concerning when considering that other local board compensation bills, like HB 4184, passed without so much as a blink."

NOTES: HB 973 was not analyzed in a *Daily Floor Report*.

Notification of when a state jail inmate will have served 75 days

HB 1015 by Canales (Hinojosa)

DIGEST: HB 1015 would have required the Texas Department of Criminal Justice to notify the court of the date on which a person sentenced to serve time in a state jail would have served 75 days in the facility. Under current law, that is the date after which a judge can suspend execution of a state-jail sentence and place a defendant on community supervision (probation). The department would have been required to have given notice by electronic communication within 60 days after receiving an inmate into custody.

GOVERNOR'S REASON FOR VETO: "House Bill 1015 requires the Texas Department of Criminal Justice to notify the sentencing court of the date on which a defendant convicted of a state jail felony will have served 75 days in a correctional facility. This mandated notification adds needless administrative bureaucracy to seemingly encourage a judge to exercise discretionary authority to grant "probation" to certain convicted felons, thereby shortening the offender's time in prison. Issuing potential early release reminders should not be the mandated responsibility of the Department of Criminal Justice. This duty has been already properly placed where it belongs: on the judges and attomeys taking part in the original criminal proceeding. Furthermore, House Bill 1015 has the potential to inappropriately increase the number of convicted felons granted early probation. Crime victims and the public deserve better."

RESPONSE: **Rep. Terry Canales**, the bill's author, said: "I am deeply disappointed that Gov. Abbott chose to veto HB 1015 and I would like to clear up some misconceptions about the bill. The idea for this legislation came from a current district court judge, who pointed out during a House Committee on Criminal Jurisprudence interim committee meeting that a judge can suspend a state-jail sentence after 75 days and impose community supervision. However, this is rarely done because there is not an adequate mechanism to notify a judge when a defendant will have served their 75th day in a state jail.

"The 82nd Legislature passed HB 2649, which created the State Jail Diligent Participation Credit Program. This program requires the Texas Department of Criminal Justice (TDCJ) to notify a sentencing court regarding the number of days a defendant diligently participated in an education or work program. TDCJ sends this notification via email. HB 1015 took advantage of this notification system by instructing TDCJ to send an email via the same mechanism. There is no additional administrative bureaucracy, as the email notification system is already in place.

"In 1993, the 73rd Legislature created state jails with two goals: they would act as a low-cost alternative to prison, and they would reduce recidivism rates. However, before this plan was fully implemented, subsequent legislatures changed the program to make state jails not an alternative to prison but a substitute to the prison system. State jails are neither low cost nor do they help to lower recidivism rates.

"State jails fail in two ways. They are costly, and they do not provide inmates with drug or alcohol treatment to help rehabilitate them for reentry into society. In fiscal 2014, costs have risen to $47.30 per day to house a defendant in a state jail. State jails should be seen as an investment with the goal of creating lower recidivism rates; however, this is not the case. Almost a third of inmates in a state jail will be reincarcerated within three years of leaving the state jail, and almost two-thirds will be rearrested within three years. By comparison, less than a quarter of inmates released from a prison will be reincarcerated within three years. On the other hand, community supervision cost the state $1.63 per day per inmate in fiscal 2014, and it had revocation rates of lower than 15 percent.

"This bill does not require a judge to suspend a person's sentence after 75 days. That power still lies in the hands of the court. It is best left to the judge to determine that inmates should be released after 75 days or that they should serve their whole sentence. HB 1015 has the goal of helping to lower crime rates and save taxpayer dollars, ideas that crime victims and the public can get behind."

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

NOTES: HB 1015 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Requiring a study on highway mile markers

HB 1119 by Hernandez (Garcia)

DIGEST: HB 1119 would have required the Texas Department of Transportation, in consultation with the Texas A&M Transportation Institute, to conduct a study assessing the need for the replacement of fallen or damaged mile markers on interstate highways. The department would have submitted a report on the study to the governor and the Legislature by January 1, 2017.

GOVERNOR'S REASON FOR VETO: "The Texas Transportation Code requires the Texas Department of Transportation to maintain a safe and efficient highway system. Pursuant to this statutory obligation, TxDOT has promulgated rules that require maintenance of 'normal markings and signs necessary for directing highway traffic in a safe and efficient manner.' Existing law already gives TxDOT the authority to study the signs on our highways and take remedial action where appropriate, so House Bill 1119 is unnecessary. Additional laws and studies are not needed to address issues that the law already accommodates."

RESPONSE: **Rep. Ana Hernandez**, the bill's author, said: "I am extremely disappointed by the governor's decision to veto critical public safety legislation. Mile markers can mean the difference between life and death for motorists in an accident, as they help first-responders locate crash sites. It is discouraging that the governor feels that this public safety priority does not warrant the state's attention."

Sen. Sylvia Garcia, the Senate sponsor, said: "HB 1119 sought to require the Texas Department of Transportation (TxDOT) to study the statewide need for the replacement of fallen or damaged mile markers on interstate highways. While Gov. Abbott is correct in his assertion that TxDOT already has the authority to study this issue, this bill would merely have ensured that TxDOT exercised that authority. The Legislature routinely instructs state agencies to prioritize or study issues that are already within a respective agency's authority, so it is troubling that the governor felt the need to veto HB 1119. Regardless, I hope that TxDOT will note the Legislature's wishes and study this important issue."

NOTES: HB 1119 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Reducing certain repeat prostitution penalties and revising offense

HB 1363 by Johnson (Whitmire)

DIGEST: HB 1363 would have established different offenses for a person receiving a fee for prostitution and a person paying a fee for prostitution. First convictions for either offense would have remained a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000), but penalties for repeat offenses would have been different for each offense.

For a person convicted of receiving a fee for prostitution, penalties for some repeat offenses would have been reduced. Second and third offenses would have been class B misdemeanors, instead of class A misdemeanors. Fourth, fifth, and sixth offenses would have been class A misdemeanors (up to one year in jail and/or a maximum fine of $4,000), instead of state-jail felonies as under current law. Under the bill, seventh and subsequent offenses would have been state-jail felonies. For those paying a fee for prostitution, repeat offenses would have carried the same penalties as current law.

HB 1363 would have allowed courts, under certain circumstances, to defer proceedings in prostitution cases without entering an adjudication of guilt and allow defendants to participate in prostitution prevention programs. The bill also would have required that prostitution prevention programs and first offender prostitution prevention programs provide participants with access to information about commercial sexual exploitation and human trafficking.

GOVERNOR'S REASON FOR VETO: "House Bill 1363 provides useful tools for courts when distinguishing between the offenses of prostitution and soliciting the services of a prostitute. This is a supportable goal, however this bill also reduces penalties for individuals convicted of prostitution on multiple occasions. Reducing penalties for willful repeat offenders is not in the best interest of the offender or the people of Texas. A better option for addressing the difference between prostitution and soliciting the services of a prostitute is Senate Bill 825, which does more to protect the victims of human trafficking and forced prostitution."

RESPONSE: **Rep. Eric Johnson**, the bill's author, said: "HB 1363 would have been a lifeline for those who are stuck in a cycle of incarceration and re-offense for prostitution. Most prostitutes have endured serious trauma and/or suffer from mental illness or addiction and were forced into prostitution — studies have shown that nearly 60 percent of individuals engaged in prostitution were physically forced into sexual exploitation. HB 1363 would have simply delayed a felony conviction for repeat prostitution, striking a balance between maintaining a significant criminal penalty for this offense while understanding that a felony conviction creates significant barriers

to obtaining legal employment and housing, which only makes it harder for people to exit prostitution. HB 1363 would have provided those who are trapped in prostitution more time and opportunity to break the cycle and successfully reintegrate into society, and it would have strengthened existing diversion programs by ensuring that these programs provide counseling and information on human trafficking. Reducing the number of people incarcerated for the offense of prostitution in Texas by encouraging diversion and delaying the imposition of a state-jail felony conviction also would have resulted in a net savings to the state."

Sen. John Whitmire, the Senate sponsor, said: "After numerous hearings and hours of testimony from both the public and criminal justice experts on the impact of human trafficking and prostitution, I sincerely believe most of the individuals arrested and convicted for the offense of prostitution are victims, not criminals. To assume that it is a willful and repeat criminal act rather than one of desperation or coercion frustrates me. I did not push to decriminalize prostitution; I sought to end abuse and save lives. Rather than locking these individuals up in prison, we should be directing our resources to rehabilitate them and end the cycle of abuse."

NOTES: The HRO analysis of HB 1363 appeared in Part Two of the May 5 *Daily Floor Report*.

Allowing financial institutions to conduct savings promotion raffles

HB 1628 by Johnson (Rodríguez)

DIGEST: HB 1628 would have allowed a bank or credit union with an office in Texas to offer a savings promotion raffle, a raffle in which a depositor has a chance of winning merely by having a specified amount of money in a savings account or savings program offered by the financial institution.

An institution offering a savings promotion raffle could not have charged a fee for or limited the withdrawal of money from an eligible account. Institutions would have been required to charge an interest rate commensurate with savings accounts not eligible for a savings promotion raffle. The bill also would have specified that a bank or credit union could not require consideration for participating in a savings promotion raffle and that opening or making a deposit in an account eligible for such a raffle did not constitute consideration.

GOVERNOR'S REASON FOR VETO: "The Texas Constitution authorizes raffles to be conducted only for charitable purposes. When non-charitable businesses conduct drawings, they typically allow entry with 'no purchase necessary,' which generally exempts the drawing from the constitutional restrictions on raffles or lotteries. House Bill 1628 authorizes banks and credit unions to conduct raffles in which raffle tickets are offered only in exchange for opening a savings account. Opening an account and paying any customary fees associated with the account amounts to consideration paid for the raffle ticket and places such a raffle squarely within the gambling prohibitions of the Texas Constitution and Penal Code. The bill would therefore require a conforming constitutional amendment in order to be effective. No such constitutional amendment was proposed by the Legislature."

RESPONSE: **Rep. Eric Johnson**, the bill's author, said: "HB 1628 had the potential to improve the economic security of Texas families by encouraging personal savings via a tool that has proved effective both here in the United States and abroad. The Prize Linked Savings Account (PLSA) programs that would have been allowed by HB 1628 could have had an enormous impact in Texas, where more than one in three households does not have a savings account and nearly half of all households do not have sufficient savings to cover basic expenses in the event of an emergency. One PLSA program here in the United States has directly led to more than 50,000 new account holders who have collectively saved more than $94 million in the four states that participate in the program. HB 1628 was carefully drafted to avoid violating existing Texas statutory and constitutional prohibitions on raffles and lotteries. It mirrors Nebraska's 2011 PLSA law that has led to a very successful PLSA program in that state, which has not been the subject of a single constitutional challenge, despite Nebraska having a raffle/lottery prohibition that is nearly identical to Texas's."

Sen. José Rodríguez, the Senate sponsor, said: “HB 1628 would have allowed banks and credit unions to hold promotional raffles to incentivize Texans to open savings accounts. The bill had bipartisan authorship and passed both chambers on their respective local and uncontested/consent calendars. HB 1628 had strong support from the financial industry, including the Texas Credit Union Association, Texas Bankers Association, and Independent Bankers Association of Texas, as well as advocacy organizations, including Texas Impact, the Center for Public Policy Priorities, and RAISE Texas.

“In crafting the legislation, great care was taken to ensure that those who opened a savings account would have unrestricted access to their funds, as well as not be subject to fees that might amount to ‘consideration,’ in violation of the state’s anti-gambling laws.

“Based on consultation with the drafting attorneys and other legal analysts, we disagree that HB 1628 as engrossed necessitated an accompanying joint resolution. We look forward to working with the governor’s office to address their concerns.”

NOTES: HB 1628 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Notice requirements for permits to drill near TxDOT easements

HB 1633 by Romero (Uresti)

DIGEST: HB 1633 would have required the Texas Railroad Commission (RRC) to adopt rules requiring an operator applying for a permit to drill an oil or gas well to state whether the well would be located within 50 yards of an easement held by the Texas Department of Transportation (TxDOT). If so, the RRC would have been required to forward a copy of the application to TxDOT within 14 days of receiving it.

GOVERNOR'S REASON FOR VETO: "Oil and gas companies are already required to report the location of their wells to the State, via the Texas Railroad Commission. The problem House Bill 1633 seeks to solve is that the Texas Railroad Commission and the Texas Department of Transportation do not communicate effectively with one another when an oil and gas producer asks the Railroad Commission for a permit to drill near a right-of-way owned by TxDOT. Instead of requiring these two state agencies to work more effectively together, House Bill 1633 thrusts a new and unnecessary hurdle onto oil and gas producers to solve the State's internal communication challenges. It is within the existing power of the two state agencies to solve this problem, and they should do so."

RESPONSE: **Rep. Ramon Romero**, the bill's author, said: "HB 1633 would have required communication between the Railroad Commission of Texas (RRC) and the Texas Department of Transportation (TxDOT) when an application was submitted for a permit to drill an oil or gas well within 50 yards of a TxDOT easement. A check box on an application would have been a simple solution to a relatively simple problem. Nonetheless, the governor's veto sends a clear message that proficient interagency cooperation, when prudent, should be a goal for all state agencies, particularly when that cooperation will result in the saving of taxpayer dollars. I look forward to working with both state agencies on implementing this change through internal rulemaking."

Sen. Carlos Uresti, the Senate sponsor, said: "HB 1633 would have required an application maintained by the Railroad Commission (RRC) for a drilling permit to include a section where the applicant can certify whether the location of the proposed well lies within 50 yards of an easement held by the Texas Department of Transportation (TxDOT). The information would have been forwarded by the RRC to TxDOT within 14 days.

"The intent of the bill is to provide notice to TxDOT so that in future plans for widening or modifying a road, the location of the well is known by TxDOT and can be accounted for in the planning stage. When wells are discovered after the planning

phase and when construction on the road begins, modifying the design of the road can be costly.

"The agencies do not need this legislation to implement these common-sense ideas and should consider establishing this line of communication using their respective rulemaking authorities."

NOTES: The HRO analysis of HB 1633 appeared in Part One of the May 7 *Daily Floor Report*.

Establishing statutory training requirements for correctional officers

HB 1855 by Rose (Whitmire)

DIGEST: HB 1855 would have established in statute minimum training hours for Texas Department of Criminal Justice (TDCJ) correctional officers to complete during their first two years of employment, something currently covered by administrative policy. TDCJ would have been required to mandate at least 280 hours of training during an officer's first 24 months of service, including mental health crisis intervention training and 140 hours of on-the-job training. The mental health crisis intervention training would have been developed in conjunction with the Texas Commission on Law Enforcement.

The bill also would have required TDCJ to mandate that correctional officers demonstrate weapons proficiency at least annually and complete at least 80 hours of continuing education every 24 months. TDCJ would have been required to develop specialized training that could have been credited toward the continuing education requirements. HB 1855 would have allowed for exceptions to the training and education requirements for some officers under certain circumstances.

GOVERNOR'S REASON FOR VETO: "Texas rightly holds its state correctional officers to the highest standards of professional excellence. The Texas Department of Criminal Justice meets those standards through numerous training and continuing education programs, including training for mental health crisis intervention. TDCJ must continue those efforts. House Bill 1855 unnecessarily micromanages the state prison system by requiring officers to meet rigid and arbitrary training and education quotas. TDCJ should retain the flexibility to adjust its training and education methods and requirements to meet the prison system's evolving needs."

RESPONSE: **Rep. Toni Rose**, the bill's author, said: "I am disappointed in Gov. Abbott's decision to veto HB 1855. The governor is correct — Texas should hold its state correctional officers to the 'highest standards of professional excellence.' HB 1855 sought such excellence by proposing that we equip correctional officers with mental health crisis intervention training that would have provided correctional officers knowledge on how to deescalate potentially violent situations, subsequently ensuring the safety of correctional officers and inmates alike. Stakeholders agreed that the minimum hours of training is reasonable and provides various exemptions to officers. This bill was crafted to ensure that TDCJ would still maintain flexibility in providing officers with training and education."

Sen. John Whitmire, the Senate sponsor, said: "While TDCJ may strive for the highest standards of professional excellence, we continue to receive hundreds of complaints from inmates and their families regarding inconsistent enforcement of

policies and arbitrary treatment varying from unit to unit. The bill was designed to provide consistency and uniformity to a large agency (25,000 corrections officers), which is suffering in both areas. The bill also provided for better training on dealing with mentally impaired offenders, who constitute almost half of our prison population. Thirty-one senators and 125 representatives agreed that more guidance was necessary."

NOTES: The HRO analysis of HB 1855 appeared in Part Two of the May 5 *Daily Floor Report*.

Automatic enrollment of employees in a deferred compensation plan

HB 2068 by Coleman (Garcia)

DIGEST: HB 2068 would have allowed certain hospital districts to enroll employees automatically in a deferred compensation plan. A hospital district would not have been required to establish a plan nor to require an employee to participate in a plan.

An employee in a hospital district that offered a deferred compensation plan would have been enrolled automatically unless the employee opted out. After enrollment, an employee would have been required to contribute by automatic payroll deduction 1 percent of the employee's earned compensation to a default investment product selected by the plan administrator from an approved vendor. The bill would have allowed an employee to end participation in the plan, contribute to a different investment product, contribute a different amount, or designate contribution as a Roth contribution. Other provisions would have specified how the deferred compensation plan would operate.

GOVERNOR'S REASON FOR VETO: "House Bill 2068 provides for the automatic enrollment of hospital district employees in a retirement plan at a contribution level of one percent unless the employee elects not to participate. Studies have shown, however, that automatic enrollment at a very low contribution percentage actually ends up reducing employees' overall retirement savings. This is because automatically enrolled employees are unlikely to voluntarily elect to contribute more than the automatic contribution. If required to choose a contribution amount, many employees will select an amount much greater than the automatic contribution. *See* Ryan Bubb & Richard H. Pildes, *How Behavioral Economics Trims Its Sails And Why*, 127 HARV. L. REV. 1593, 1609 (2014) ('[I]n practice these programs appear to reduce overall retirement savings.'); *see also* Eleanor Laise, *Automatic 401(k) Plans Might Not Save Enough*, WALL STREET JOURNAL (Jan. 8, 2008). One of the largest retirement plan administrators in the country has reported that between 2007 and 2011, the percentage of plans using automatic enrollment — usually with a default contribution of three percent — nearly doubled, while overall retirement savings rates declined. VANGUARD, HOW AMERICA SAVES 2012, at 29 fig. 31 (2012) (attributing this decline in part 'to the growing use of automatic enrollment and the tendency of participants to stick with the default deferral'). Thus, House Bill 2068 would likely undermine its stated goal of increasing retirement savings and investment returns."

RESPONSE: **Rep. Garnet Coleman**, the bill's author, said: "It is disappointing that Gov. Abbott vetoed this important piece of legislation. HB 2068 passed the House and Senate by an overwhelming majority. I appreciate the research Gov. Abbott put into making

his decision, but it appears that we disagree on a matter of principle, if not policy. This bill is not about favoring one form of retirement plan over another; it's about allowing those who are in the best position to decide to be the ones making that decision. What is true for the nation may not be true for a particular Texas county. By vetoing this bill, Gov. Abbott is maintaining a 'one-size-fits-all' approach for our state's hospital districts, and I do not believe this is a good idea.

"I hope to work with the governor's office over the interim in the hopes of finding an acceptable solution. After all, I agree with Gov. Abbott that more needs to be done to help Texans prepare for retirement because a majority of Texans are not enrolled in a retirement savings plan and Texas ranks 45th overall when it comes to retirement plan participation. (Copeland, Craig. *Issue Brief No. 405: Employment-Based Retirement Plan Participation: Geographic Differences and Trends*, 2013. Washington, DC: Employee Benefit Research Institute, 2014.)"

Sen. Sylvia Garcia, the bill's sponsor, said: "It is unfortunate that Gov. Abbott chose to veto this legislation that would have served to increase the retirement safety net of hospital district employees and was supported by a broad range of stakeholders, including employee groups. The bill's automatic enrollment is much like the state's own plan and is designed to increase employee participation in deferred compensation plans and thus their retirement savings, especially for those who would not enroll otherwise. According to 2013 data, approximately 59 percent of deferred compensation plans in the United States have an automatic enrollment feature. On average, plans without an automatic enrollment feature typically have around 60 percent participation in the plan. The participation rate for plans with an automatic enrollment feature averages about 85 percent.

"The governor asserts that automatic enrollment at 1 percent undermines an increase in retirement savings and selectively references a study by Vanguard. Specifically, he says that 'automatically enrolled employees are unlikely to voluntarily elect to contribute more than the automatic contribution.' However, many of the employees who would be automatically enrolled in these plans would not do so otherwise. In that respect, this legislation is beneficial. Automatic enrollment is designed to get employees over the hump of establishing a deferred compensation plan account, which is a barrier for a lot of employees, and the research shows it's very beneficial to lower-paid employees, minorities, and women. Once an account is established, then hospital districts can work with employees to encourage them to increase their deferrals. The governor's veto was completely unwarranted and once again, had the governor voiced his concerns, we would have been happy to work with him. I will work with our hospital districts again next session to address this issue and encourage employees to save for retirement."

NOTES: The HRO analysis of HB 2068 appeared in Part Two of the April 27 *Daily Floor Report*.

Reporting of rate methodologies for Medicaid managed care and CHIP

HB 2084 by Muñoz (Hinojosa)

DIGEST: HB 2084 would have required the Health and Human Services Commission (HHSC) to publish actuarial reports containing specified information about the premium payment rate-setting process for managed care programs under Medicaid and the Children's Health Insurance Program (CHIP).

The reports would have been required to be in a format that allowed for tracing data and formulas across attachments, exhibits, and examples. They also would have had to clearly identify and describe:

- the methodology by which the HHSC executive commissioner set the payment rates;
- the data sources used;
- the components of the process that were assumptions and how these assumptions were developed;
- multipliers and factors used throughout the reports, including the source and purpose of each; and
- the methodology by which the executive commissioner determined that the rates were actuarially sound for the population covered and the services provided.

HB 2084 would have specified that HHSC was not required to publish particular information in an actuarial report if the commission determined the information was proprietary.

GOVERNOR'S REASON FOR VETO: "Managed care organizations (MCOs) are paid by the taxpayers to insure Texas's Medicaid population. The rate the State pays MCOs per Medicaid recipient is determined in large part by federal law, but there is substantial room for negotiation. Both the state and the MCOs conduct internal actuarial analyses that are critical to the rate-setting process.

"The Texas Health and Human Services (HHSC) represents the taxpayer in rate negotiations with MCOs. House Bill 2084 would require HHSC to reveal the details of the internal actuarial analysis it uses when negotiating rates on behalf of the State. This would hamper HHSC's ability to negotiate for the best possible rate. Billions of dollars in taxpayer funds are at stake. Where there is room for negotiation, HHSC should have all available tools at its disposal to protect Texas taxpayers."

RESPONSE: **Rep. Sergio Muñoz**, the bill's author, said: "I am deeply disappointed in Gov. Abbott's veto of HB 2084, and I am particularly concerned because his reason for vetoing had been fully countered through a Senate amendment, which prevented the HHSC from revealing any proprietary information that would affect negotiations for best-value contracts.

"HB 2084 was a government transparency bill that originated from the Legislative Budget Board's Governmental Effectiveness and Efficiency Report, and it would have shed light on the convoluted premium payment rate-setting process in the Medicaid managed care programs and CHIP.

"The process by which payment rates are set is highly complex. It involves dozens of direct and indirect components and continues to change over time. The primary criterion for these rates is that they be 'actuarially sound,' leaving significant discretion to HHSC and its actuaries.

"The rate-setting process is not well documented in actuarial reports that are used to certify and support the rates. Within the reports, it is difficult to follow how rates are set because factors, sources, methodologies, and formulae are unclear or omitted. As a result, it is difficult to evaluate whether rates are reasonable and appropriate.

"HB 2084 amended statute to require the process used by the commission to be more transparent in demonstrating how the health maintenance organization (HMO) rates meet actuarial soundness guidelines put forth by the Actuarial Standards Board, national experts in setting HMO capitation rates.

"More transparent documentation of the methodology, calculations, and assumptions used in the Medicaid managed care program and CHIP rate-setting process for acute care, long-term care and pharmacy would provide policymakers and stakeholders more information with which to understand the factors that impact program costs, to deliberate program funding needs, and to assess the efficacy of the rate-setting process.

"Gov. Abbott stated that 'House Bill 2084 would require HHSC to reveal the details of the internal actuarial analysis it uses when negotiating rates on behalf of the State. This would hamper HHSC's ability to negotiate for the best possible rate.'

"I challenge Gov. Abbott's reasoning that HB 2084 would have hampered HHSC's ability to negotiate best possible rates. A clarifying Senate amendment prevented this scenario. HHSC would not have been required to publish any information that it determined to be proprietary. This language ensured that HHSC had the ability to protect any information that would limit the state's ability to negotiate best-value contracts and run an efficient Medicaid program.

"The HHSC negotiates on behalf of Texans and uses taxpayers dollars, and because of this reality, folks should know how the money is spent and how the formulae are derived."

Sen. Juan Hinojosa, the bill's sponsor, said: "This bill would have increased transparency to our Medicaid managed care programs' rate setting process and was based on the Legislative Budget Board's Governmental Effectiveness and Efficiency Report."

NOTES: The HRO analysis of HB 2084 appeared in Part One of the May 4 *Daily Floor Report*.

Creating the East Houston Management District

HB 2100 by Hernandez (Garcia)

DIGEST: HB 2100 would have created the East Houston Management District. The bill would have designated boundaries and specified the district's purpose, the powers and duties of the district and the board, its taxing and bonding authority, and dissolution procedures if the district were dissolved.

GOVERNOR'S REASON FOR VETO: "Determining the boundaries of new taxing districts should be a fair and transparent process. The boundaries of the management district created by House Bill 2100 received particular attention during legislative deliberations. In particular, questions were raised regarding the exclusion of certain large parcels from the district."

RESPONSE: **Rep. Ana Hernandez**, the bill's author, said: "It's surprising that the governor would decide to veto a bill that his office helped write, as that is exactly what he has chosen to do in this case. My office worked with the Office of the Governor every step of the way to ensure that HB 2100 was a bipartisan product. This includes determining the management district's boundaries, which rest entirely within House District 143. At the governor's request, changes were made to the bill, including revised language for the threshold of an establishment petition.

"The governor has shown not only a lack of respect for the Denver Harbor community's ability to address their own needs but that his promises of a cooperative approach to government are baseless. Working relationships are founded on trust and goodwill."

Sen. Sylvia Garcia, the Senate sponsor, said: "I am deeply concerned that the governor took steps to veto a local bill to help address infrastructure issues in the Port of Houston region, especially after my office worked with Gov. Abbott to make last-minute changes he requested. It had no local opposition from businesses or residents in the area as we had worked with local stakeholders throughout the process, making changes as needed to ensure consensus. I will work with Rep. Hernandez to file this local bill again next session."

NOTES: HB 2100 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Appealing property appraisals in Atascosa County justice courts

HB 2282 by Guillen (Uresti)

DIGEST: HB 2282 would have allowed property owners in the county described by the bill (Atascosa County) to appeal certain orders of the appraisal review board to a justice court instead of a district court, if:

- the appeal related only to a determination of appraised value or eligibility for a tax exemption; and
- the disputed portion of the taxable value was $5,000 or less.

An appeal meeting these conditions could have been brought in any justice precinct in Atascosa County. If the justice court had determined that it did not have jurisdiction of the appeal, the property owner could have appealed the order to a district court within 30 days after the justice court's dismissal.

These provisions would have expired September 1, 2021, after which the Office of Court Administration of the Texas Judicial System would have been required to conduct a study of the bill's effectiveness and issue a report with recommendations to the Legislature.

GOVERNOR'S REASON FOR VETO: "The Texas Tax Code allows all property owners in Texas to bring an appeal in district court to challenge an appraisal district decision regarding their property. These appeals are important matters for property owners, who deserve a fair and predictable process by which to challenge the actions of appraisal districts.

"House Bill 2282 departs from the uniform, statewide rules governing appraisal appeals by allowing property owners in just one of the State's 254 counties to file their appeals with a justice of the peace instead of a district court. Unlike district courts, justices of the peace generally do not serve an entire county; instead they serve a particular geographic district within the county. Yet House Bill 2282 would allow property owners to choose any justice of the peace in the county to hear their appeal. This would invite forum shopping and would allow a justice of the peace to make rulings about property in a part of the county he or she does not represent."

RESPONSE: **Rep. Ryan Guillen**, the bill's author, said: "Single county pilot programs that sunset after a short period of time are quite common. Currently, Texas property owners do not have a practical, fair or predictable process to challenge appraisal district decisions where the disputed amounts are less than the cost of hiring an attorney to represent them in district court. This bill would have provided Texas taxpayers an opportunity to prove that this unfair disadvantage should not exist in a state that prides itself as a pro-taxpayer state."

Sen. Carlos Uresti, the Senate sponsor, said: "HB 2282 would have applied only to Atascosa County, and the bill enjoyed local support. When property tax appraisals are skyrocketing, owners of low value properties have little recourse. Under current law, if the property owner disagrees with the determination of their county appraisal review board, their only option is to enter arbitration or file suit in district court. Both of those options are costly, and when a low value property is in dispute, have the potential to cost more than the amount in dispute.

"HB 2282 sought to establish a pilot program in Atascosa County that would have allowed an owner to file in justice of the peace court when the amount in dispute is less than $5,000. HB 2282 is a pro-taxpayer measure, and had the pilot program been successful, it could have served as a model for use statewide to save money for not only our taxpayers but our counties as well."

NOTES: HB 2282 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Changes in the process for appointing election judges

HB 2381 by Reynolds (Rodríguez)

DIGEST: HB 2381 would have required judges of countywide polling places to be appointed by the county chairs in a manner that provided equitable representation. The county clerk would have been required to prepare for the commissioners court a list of persons whose names were submitted by the county chairs and who were eligible to serve as election judges. The commissioners court would have appointed individuals from this list as the presiding judge and the alternate presiding judge. The county clerk, rather than the commissioners court, would have been allowed to reject people from the list if they did not meet the eligibility requirements.

The bill would have authorized the county clerk to submit, and the commissioners court to preapprove, the appointment of more presiding judges or alternate presiding judges than necessary to fill available positions. The county clerk could have selected an individual whose appointment was preapproved to fill a vacancy in a position that was held by an individual from the same political party.

For a political party holding a primary election, HB 2381 would have removed the requirement that the county executive committee approve judge appointments made by the county chair. For each primary, the county chair could have filled any vacancy that occurred in the position of presiding judge or alternate presiding judge.

The early voting clerk would have been required to select election officers for a primary election for the main early voting polling place and any branch polling place in the same way as in a general election for state and county officers. This requirement would not have applied to certain joint primaries.

GOVERNOR'S REASON FOR VETO: "The Election Code allows the county chairs of each major political party to select election judges to represent the political party at polling places, subject only to the county commissioners court's review of the legal eligibility of the county chairs' selections. House Bill 2381 would enable partisan county clerks to override the selection of the party county chair in some cases. The selection of a political party's representative at a polling place should be left to party leadership and should not be subject to any influence by elected county clerks whose interests may not align with the party's interest. Other sections of House Bill 2381 contain reforms that would be worthy of reconsideration by the next Legislature."

RESPONSE: **Rep. Ron Reynolds,** the bill's author, said: "The governor's veto of HB 2381 is very disappointing. The reason for the veto that was given suggested that the bill would have given more authority to county clerks and election administrators in selecting

election workers. This is inaccurate. The bill simply streamlined the process by which lists of election workers would have been transmitted. Unfortunately, many other important provisions of the bill with which the governor had no issue suffered the consequences of this misunderstanding. I hope these issues can be addressed successfully next session."

Sen. José Rodríguez, the Senate sponsor, said: "The governor's veto statement expresses concern that partisan county clerks could override the selection of the party county chair in the selection of election judges. First of all, I disagree with the claim that party county chairs are less partisan or less biased than county clerks. Putting that aside, this bill was carefully negotiated to ensure that the county officials and political parties were in agreement with the language and selection process. There were no objections raised or political party opposition in the Senate after the bill was negotiated in the House. Notably, the bill passed on the local and uncontested calendar in the Senate."

NOTES: HB 2381 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Creating a workers' compensation safety reimbursement program

HB 2466 by Collier (Eltife)

DIGEST:

HB 2466 would have created a workers' compensation safety reimbursement program for certain eligible small businesses and other small non-governmental entities that had workers' compensation insurance coverage.

The program would have reimbursed eligible employers up to $5,000 per year for expenses incurred to facilitate safe and healthy workplaces for their employees. These expenses could have gone toward:

- physical modifications to the worksite;
- safety equipment and training; and
- other measures necessary to protect employees from unsafe working conditions.

These provisions would have been funded by the first $100,000 in administrative penalties collected by the Texas Department of Insurance's Division of Workers' Compensation. Legislative appropriations for the program could have been spent only to implement the program and only to the extent that funds were available.

HB 2466 would have required the insurance commissioner to publish a report by December 1, 2018, on the results and any recommendations for the program.

GOVERNOR'S REASON FOR VETO:

"One way for government to grow is by the addition of large, high-profile new state programs. That kind of government growth is easy to spot and relatively simple to guard against. Perhaps more often, however, government growth takes place through the accumulation over time of many small additions to the bureaucratic state. Each one may seem like a benign, low-cost effort to address discrete problems thought to be facing society. But when viewed together, they amount to a massive expansion of the size, scope, and cost of government. Once in place, these programs tend only to get bigger and more costly. Many people come to rely on or become financially interested in the program's continued existence, which makes it difficult to reduce in size, much less eliminate.

"House Bill 2466 creates just such a program. Texas has been doing pretty well without a safety reimbursement program run by the Department of Insurance. To stay strong, we should resist the needless growth of government even in small ways."

RESPONSE: **Rep. Nicole Collier**, the bill's author, said: "I am disappointed that Gov. Abbott vetoed HB 2466, which created a workplace safety pilot program designed to help small businesses and their employees across our state. The Division of Worker's Compensation requested HB 2466 be filed to better protect Texans working in hazardous environments, since Texas has had a higher number of workplace fatalities than most states. HB 2466 would have been the turning point for Texas, where it would no longer be marked by such high rates of workplace fatalities but heralded as a place where a safer work environment is good for business as well as working Texans."

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

NOTES: The HRO analysis of HB 2466 appeared in Part Two of the May 5 *Daily Floor Report*.

Delaying curtailment of groundwater use for power generation or mining

HB 2647 by Ashby (Estes)

DIGEST: HB 2647 would have allowed a power generation facility or its associated mine to petition a groundwater conservation district for a delay of any district action that would have reduced or curtailed production from its groundwater well or limited the groundwater production rate of its well to certain maximum annual amounts. The petition would have included evidence that the owner or operator of the power generation facility or its associated mine had made a good faith effort to identify alternative sources of water.

Once a district received a petition, it would have been required to hold a public hearing and make a final determination as to whether the proposed reduction or curtailment in groundwater production threatened public health or safety or the reliability of the electric grid. The proposed reduction or curtailment could not have taken effect until the district made a final determination.

If the district determined the reduction or curtailment would have threatened public health or safety or the reliability of the electric grid, the district would have been required to delay it by at least seven years. If a well owner or operator received a delay, the owner or operator could have petitioned the district a second time for an additional three-year delay, which would have required the district to hold a public hearing and make another final determination.

GOVERNOR'S REASON FOR VETO: "Texas landowners have a constitutionally protected right to access the groundwater under their property. Government action affecting that vested right must be based only on very careful deliberation, which ideally should take place at the local level based on local needs and concerns. Statewide groundwater rules are less able to take vitally important local interests into account.

"Under current law, local groundwater conservation districts have the ability to implement specific management strategies, such as curtailment, that prioritize certain users as deemed appropriate after local deliberation. House Bill 2647 eliminates local discretion by mandating the preferential treatment of certain types of groundwater use over other important uses. If one class of landowners is automatically exempt from curtailment, others will have to bear an unequal burden when water is scarce. Enshrining in state law the rule that groundwater conservation districts will give priority to one class of water users could result in the abridgement of other users' groundwater rights. Groundwater management should be based on sound science and public input at the local level, not on one-size-fits-all state mandates like House Bill 2647."

RESPONSE: Neither **Rep. Trent Ashby**, the bill's author, nor **Sen. Craig Estes**, the Senate sponsor, had a comment on the veto.

NOTES: The HRO analysis of HB 2647 appeared in Part One of the May 1 *Daily Floor Report*.

Petitions related to a candidate's application for a place on a ballot

HB 2775 by E. Rodriguez (Zaffirini)

DIGEST: HB 2775 would have applied to petitions filed in connection with a candidate's application for a place on the ballot. It would have allowed a petition to be corrected and additional signatures presented to the appropriate authority after the petition had initially been filed but not after the deadline had passed for filing the petition. The bill would have specified that a single notarized affidavit by any person who obtained signatures was valid for all signatures the person gathered if the date of notarization was on or after the date of the last signature.

GOVERNOR'S REASON FOR VETO: "The Election Code requires those seeking a place on the ballot for certain races to submit to the Secretary of State a petition containing signatures of registered voters who support the candidacy. House Bill 2775 would allow candidates who submit deficient petitions to update their petitions in a piecemeal fashion, rather than requiring the submission of a single, legally compliant petition. This could increase the risk of erroneous or fraudulent petitions. To the extent there are concerns about the Secretary of State's current policies on candidate petitions, the Legislature should work with the Secretary of State's office to address this issue in the next session."

RESPONSE: **Rep. Eddie Rodriguez**, the bill's author, said: "There is no statutory language on how petitions are filed with chairs. Every cycle candidates ask, 'Can I bring in more signatures?' or 'Can I bring more signatures after the deadline?' Prior to HB 2775 and after its veto, there is not a clear answer in the law. Years ago, the Republican Party of Texas removed a Supreme Court candidate from the ballot. He sued (*Francis* lawsuit decision) and that lawsuit's findings by the Texas Supreme Court are now our guidance. It says a candidate may file a petition and then add additional signatures to it until the filing date. No signatures may be added after the filing deadline. This bill simply wrote that ruling into the code so everyone knew the answers by looking in the Election Code and not obscure case law. So it's now vetoed — and nothing changes — other than Republican and Democratic party staffers and county chairs will need to tell candidates what they can or can't do under the court's ruling. We still have to do what this bill says because of the Supreme Court decision. One last point: it's not difficult to accept additional signatures. The county chair simply staples them to the first submission and, boom, it's done. As a former executive director of a major county party, I can personally attest to this."

Sen. Judith Zaffirini, the Senate sponsor, said: "In his veto statement, the governor expressed concern that allowing corrections to petitions 'could increase the risk of erroneous or fraudulent petitions,' but it is unclear why this would be the case. Indeed, allowing corrections rather than requiring entire new submissions is the most efficient way to *reduce* errors.

"What's more, if the filing deadline has not passed, why hold a candidate to the contents of the original petition, especially since the law already allows for the amendment of other aspects of a ballot application before the deadline?

"Additionally, current law can have extraordinarily harsh results. If a ballot application requires 500 signatures, for example, and a candidate submits a petition bearing 550 signatures, of which 55 are disqualified, it seems unduly burdensome to require that the candidate submit a new petition with 500 new signatures, rather than simply submitting the five necessary to reach the threshold.

"The benefit of easing this undue burden on our democratic process more than justifies any cost in terms of the need to scrutinize supplemental petitions."

NOTES: HB 2775 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Requiring correctional facilities to observe water conservation measures

HB 2788 by Springer (Perry)

DIGEST: HB 2788 would have allowed a retail public utility that provided water or sewer service to a correctional facility to require the operator of the facility to comply with water conservation measures adopted by the utility.

GOVERNOR'S REASON FOR VETO: "Texas' prison system and the many county-level correctional facilities across the state should seek to conserve water whenever doing so is consistent with their core purpose — the secure and lawful incarceration of inmates. While water conservation is a worthy goal, House Bill 2788 goes too far by subjecting prisons and jails to the conservation mandates of local water utilities that do not share the correctional facilities' penological mission. Ceding control of the state's correctional facilities' water use to local water utilities creates the potential for interference with a core function of government. If the legislature wishes to require prisons and jails to use less water, it should do so directly rather than outsourcing the decision to local water utilities. Moreover, this bill would mandate unfunded costs on state and local correctional facilities. Any savings touted through reduced water consumption can, and should, be realized today through prudent water conservation measures that are not driven by regulation."

RESPONSE: **Rep. Drew Springer**, the bill's author, said: "The 84th Legislature started amidst a multi-year drought, and during this time many of our communities were under severe water restrictions. In some communities, citizens cut their water usage in half, while local prisons increased usage. In another case, a prison with a population a third of the size of the town used the same amount of water as the local citizens. It is with this in mind that HB 2788 was filed, laid out in committee, and passed both chambers with no objections voiced. It was never the intent of this legislation to intervene with incarceration practices or prevent the Texas Department of Criminal Justice (TDCJ) from fulfilling its duties. I will continue to work with the TDCJ and the Office of the Governor to reduce water waste by prisons with the goal to achieve reductions administratively in light of this problem. However, if TDCJ is unable to implement water saving measures I look forward to working with the governor in the 85th Legislature on acceptable language to address this problem."

Sen. Charles Perry, the Senate sponsor, had no comment on the veto.

NOTES: HB 2788 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Limitations on appraised value under certain chapter 313 projects

HB 2826 by Murphy (Huffman)

DIGEST: HB 2826 would have changed how the Texas Economic Development Act (Tax Code, ch. 313) applied to certain projects located in two or three school districts. The bill would have specifically provided that, for the purposes of determining the minimum amount of qualified investment and the minimum amount of a limitation on appraised value, a project would have been considered to be located in the school district that had the highest taxable value of property for the preceding tax year.

The bill also would have changed how the minimum limitation on appraised value was calculated when the project was located in multiple school districts. In determining whether the property was eligible for a limitation on appraised value, the bill would have required the comptroller to consider whether the project would be eligible if it were located at one site in a single school district. It also would have required the comptroller to verify a random sample of data used in preparing a report submitted to the Legislature on ch. 313 agreements. The data verified for the purpose would have been required to have constituted at least one-third of the data used in preparing the report.

If all parts of a project were located within school districts in a strategic investment area or in certain rural school districts, for purposes of determining the required minimum amount of qualified investment and minimum limitation on appraised value, the project would have been considered to have been located in the school district that had the highest taxable value of industrial property for the preceding tax year.

GOVERNOR'S REASON FOR VETO: "Chapter 313 of the Tax Code allows for certain businesses to negotiate with school districts for lower appraisal valuations and, as a result, lower school property taxes. While the program may sometimes have a positive impact on local economic development, serious concerns exist about its oversight, its transparency, and its value to the taxpayers. According to a 2013 report by the Comptroller's Office, Chapter 313 cost the taxpayers $341,363 for every new job created by the program. The Comptroller estimates that House Bill 2826 will ultimately cost State taxpayers $100 million per biennium. I cannot support expansion of an incentive program that has not been proven to deliver the value taxpayers deserve."

RESPONSE: **Rep. Jim Murphy**, the bill's author, said: "The Texas Economic Development Act (Tax Code, ch. 313) was created in 2001 to address the barrier that high property taxes present in attracting new capital-intensive projects to Texas. Texas had lost a number of major new industrial projects to other states due to the state's high property tax burden, and in particular, local school property taxes. Chapter 313

encourages capital investment and job creation by providing a temporary limitation on the taxable value of new investment property. Although beneficiaries are required to create high-wage jobs, it is capital investment, and not job creation, that is the main focus of the program. The 2015 Report of the Texas Economic Development Act states that Texas gained 259 projects and $123 billion in capital investment.

"Past concerns regarding the need for oversight and the scale of benefit were addressed in revisions to the law in the 2013 session. The comptroller is now required to verify that the benefits of a project to the state exceed the benefits received by the taxpayer — proving that each project makes money for the state. The law now also imposes a "but-for" provision, in which the taxpayer must demonstrate that the limitation is a determining factor in the decision to invest in Texas.

"HB 2826 would have fixed a problem for projects spanning multiple school districts, allowing them to be evaluated as single integrated projects, as opposed to a separate project in each individual school district. HB 2826 also included language allowing the state to verify a project's job-creation numbers, thereby addressing concerns regarding both the entire program's impact and transparency.

"Texas wins with economic development and growth. Chapter 313 projects must prove that they make money for the state. State fiscal notes are one-sided — assessing only the tax benefits of a project and not the taxes paid to the state or broad fiscal benefits. Projects are heavily vetted, and require a tremendous amount of documentation, all of which is publicly available. Chapter 313 is a successful, though misunderstood, program, growing the state's economy, our tax rolls, and our job numbers."

Sen. Joan Huffman, the Senate sponsor, had no comment on the veto.

NOTES: The HRO analysis of HB 2826 appeared in Part One of the May 4 *Daily Floor Report*.

Requiring written requests for counties to refund small amounts

HB 2830 by Martinez (Hinojosa)

DIGEST: HB 2830 would have provided that a county clerk or a district clerk was not required to issue a refund for an amount of $2 or less unless the refund was requested in writing by the person who overpaid or paid in error.

GOVERNOR'S REASON FOR VETO: "House Bill 2830 allows counties to refuse to refund to taxpayers amounts less than two dollars unless the person owed the refund requests it in writing. Placing this burden on the person owed the money will cause the vast majority of small refunds never to be paid. That is unacceptable. Citizens are legally entitled to any money owed them by the government, no matter how small the amount."

RESPONSE: **Rep. Armando Martinez**, the bill's author, said: "Knowing the time and effort that went into the passing of HB 2830, it is disappointing to have an unopposed bill vetoed by the governor. HB 2830 was a common-sense approach to saving taxpayers' money, especially in light of similar refund provisions in the Tax Code. In a period of time when it is imperative for government entities to run as efficiently as possible, with a minimal financial burden on the taxpayer, HB 2830 was a means to this end."

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

NOTES: HB 2830 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Regulating the journeyman lineman license and examination

HB 3043 by S. Thompson (Garcia)

DIGEST: HB 3043 would have specified that a journeyman lineman's work included the installation of equipment used to transmit and distribute electricity. This work also would have included electricity from a substation to the point where the electricity entered a building or structure.

The Texas Department of Licensing and Regulation (TDLR) would have been required to establish a journeyman lineman examination to test an applicant's knowledge of materials and methods used in the journeyman lineman's work and the standards prescribed by the National Electrical Safety Code as adopted by the Texas Commission of Licensing and Regulation. The commission or the executive director of TDLR would have been required to adopt the revised code after it was published every five years for the use in the journeyman lineman's examination.

GOVERNOR'S REASON FOR VETO: "State licensure of occupations in many cases impedes free market competition and drives up the costs of services for consumers. Texas law currently allows for the licensure of journeymen linemen. Only 33 individuals have applied for the license since it was authorized in 2013. Current law does not require a license in order to conduct journeyman lineman work, nor should it. The license serves no imperative public purpose, requires unnecessary government bureaucracy, and creates the potential for unionized workers to artificially increase prices for consumers.

"House Bill 3043 is an attempt to increase the number of applicants seeking to be licensed and regulated by the state for conducting lineman work. This would only increase the potential for the license to be used in an anti-competitive manner. Raising the barriers to entry into an occupation should be avoided whenever possible."

RESPONSE: **Rep. Senfronia Thompson**, the bill's author, said: "The work the journeyman lineman performs is generally done by an electric company lineman who works for that specific company and works on their company lines. This means these electric company linemen can work without a license as long as they are working for an electric company, co-op, or municipal utility, but not otherwise.

"Journeymen linemen are generally retired electric company linemen who help the electric companies after big storms and on unusually large jobs. When the Electrical Licensing Act was passed, it grandfathered persons already doing this type of work. Because company linemen do not work under master electricians, they cannot take the test or receive an electrician license. This is why the journeyman lineman license was created. Far from limiting those who can do this type of work, the journeyman

lineman license in fact expands the number of persons who can do this type of work. The journeyman lineman license allows for this important, yet limited, type of electrical work to be performed on electrical equipment located on a customer's property (such as a Coca Cola production and bottling facility) as opposed to only on the electrical equipment under the exclusive control of an electric utility, power generation company.

"The purpose of HB 3043 was to correct the existing language of the statute that unintentionally excludes lineman from work that is integral to the job of the journeyman lineman. The proposed language made clear that this work is included within the coverage of the license. The original intent of the bill we passed last session was to allow the lineman's license to cover work from the source of production all the way to the final destination. This is traditional work done by an electric company lineman and should be within the scope of the journeyman lineman license. HB 3043 clarified that intent."

Sen. Sylvia Garcia, the Senate sponsor, said: "It appears that the governor has misunderstood the intent and the effect of the bill. Nothing in HB 3043 would prevent any individual practicing their trade from doing so in the future. Nothing in HB 3043 would affect costs or wages. In fact, the only impact of the bill would be to increase economic opportunity for those who are currently inadvertently excluded from aspects of lineman work by virtue of ambiguous language in the original bill (HB 796, 83rd Legislature) creating the license. That is why the final bill had no opposition from utility companies nor from contractors' associations, both union and non-union, in the legislative process."

NOTES: The HRO analysis of HB 3043 appeared in Part 5 of the May 8 *Daily Floor Report*.

Enforcement of certain ordinances by a building standards commission

HB 3060 by Anchia (West)

DIGEST: HB 3060 would have allowed a municipal building standards commission panel to order that action be taken as necessary to remedy, alleviate, or abate a violation of an ordinance relating to animal care and control or a water conservation measure, including a water restriction.

GOVERNOR'S REASON FOR VETO: "Local governments generally should have flexibility to respond to local concerns, including the need to conserve water. House Bill 3060 goes too far, however, by granting broad authority to local enforcement commissions to interfere with private property rights. Lawn-watering restrictions can already be enforced by fines. The additional enforcement authority provided by this bill would allow the government to insert itself too deeply into what a private property owner chooses to do on his or her own land. Local governments already have sufficient tools at their disposal to encourage their residents to use less water."

RESPONSE: **Rep. Rafael Anchia**, the bill's author, said: "I must respectfully disagree that HB 3060 would have given additional broad authority to local governments. This bill was merely a clean-up item from the last session, where the Legislature already authorized city commissions to hear matters involving ordinance violations for water restrictions. This bill would have simply clarified the types of orders those commissions can issue under their existing authority; it would not have given them additional local control over private property rights."

Sen. Royce West, the Senate sponsor, had no comment on the veto.

NOTES: The HRO analysis of HB 3060 appeared in Part Two of the May 1 *Daily Floor Report*.

Victim-offender mediation programs for certain criminal cases

HB 3184 by McClendon (Menéndez)

DIGEST: HB 3184 would have authorized counties and cities, in coordination with local prosecutors, to establish pretrial victim-offender mediation programs. The programs could have been used for those arrested for or charged with misdemeanors and state-jail felonies involving property, under certain circumstances. The bill would have required that defendants not have been previously convicted of a felony or a misdemeanor, other than a traffic offense punishable only by a fine. It would have established requirements for the programs, including that prosecutors consent to the referral of a defendant's case to a mediation program, victims consent to the mediation, and defendants enter into binding mediation agreements.

If a defendant had entered a victim-offender mediation program, courts could have deferred proceedings without accepting a guilty or no contest plea and would have been required to dismiss criminal actions against defendants if certain conditions had been met. The Texas Juvenile Justice Board would have been required to establish guidelines allowing victim-offender mediation programs to be implemented and administered by juvenile boards.

GOVERNOR'S REASON FOR VETO: "Mediation is a process available in civil lawsuits by which parties can work out their disputes without using courts. House Bill 3184 imports the civil law process of mediation into criminal law, allowing for mediation between the victim of the crime and the criminal to take the place of prosecution by the State, even in some violent felony cases. This 'victim-offender mediation' leaves out a key party in criminal litigation — the State of Texas. Criminal indictments in Texas allege that a crime has been committed 'against the peace and dignity of the State.' The State, not the victim of crime, brings criminal litigation against the defendant. And while prosecutors do seek justice for victims, their primary duty is to represent the broader public interest in deterring and punishing crime for the good of all Texans. Making amends with the victim of a crime does not absolve the criminal of his legal debt to the State. Mediation is not well-suited to the criminal context and should be reserved for civil cases."

RESPONSE: Neither **Rep. Ruth Jones McClendon**, the bill's author, nor **Sen. José Menéndez**, the Senate sponsor, had a comment on the veto.

NOTES: The HRO analysis of HB 3184 appeared in Part Four of the May 8 *Daily Floor Report*.

Allowing certain cities to consider bidder's location in awarding contracts

HB 3193 by Bernal (Menéndez)

DIGEST: HB 3193 would have allowed a city that contained more than 75 percent of the population of a county of 1.5 million or more residents (San Antonio) to consider the principal location of a business in awarding certain contracts. A city that considered the location of businesses and scored proposals on a 100-point scale would have been required to assign 10 points to an offeror whose principal place of business was in the municipality or five points to an offeror who employed a specified number or percentage of employees in the municipality. The provisions would not have applied to contracts for construction services of $100,000 or more.

GOVERNOR'S REASON FOR VETO: "I previously vetoed Senate Bill 408, explaining that government has an obligation to spend no more of the taxpayers' money than necessary. The practice of competitive bidding forces government officials to put the taxpayers' interests ahead of any temptation to steer the people's business to favored vendors. House Bill 3193 would allow the City of San Antonio, and only that City, to reject the best bid and instead spend more money on a San Antonio-based vendor. Like Senate Bill 408 before it, House Bill 3193 improperly relieves government officials of their duty to seek the best possible value for the taxpayers. The bill is made worse because it creates different rules for different cities without any legitimate reason to do so."

RESPONSE: **Rep. Diego Bernal**, the bill's author, said: "Gov. Abbott vetoed HB 3193, a 'buy local, hire local' bill that would have allowed the City of San Antonio to foster the growth of local businesses by giving them a leg up when bidding on city contracts. The bill was a product of input provided by the business community, local trade organizations, and tremendous support by the residents of San Antonio.

"San Antonio is absolutely open for business, and we need to make sure locals have an opportunity to be a part of that success. This bill was designed to give the underdog a hand and encourage larger companies to partner with local talent. It was a potential win-win. We lost this weekend, but will work hard moving forward to demonstrate the value of this initiative."

Sen. José Menéndez, the Senate sponsor, said: "HB 3193 was a local bill that only affected contracts located in San Antonio. It was a top priority for the City of San Antonio to create local economic development. The bill would have encouraged more jobs and fostered growth for businesses located in the city. It would have been a net benefit to the taxpayers of San Antonio."

NOTES: The HRO analysis of HB 3193 appeared in Part Four of the May 8 *Daily Floor Report*.

Criminal penalty for certain transactions of oil, gas, or condensate

HB 3291 by Raymond (Zaffirini)

DIGEST: HB 3291 would have made it a second-degree felony (two to 20 years in prison and an optional fine of up to $10,000) for a person who was not a pipeline operator or gatherer authorized by the Texas Railroad Commission to recklessly possess, transport, buy, or sell condensate, oil, or gas, if:

- the action was part of a transaction for which the commission required authorization; and
- the commission had not authorized the transaction or received a request for authorization.

GOVERNOR'S REASON FOR VETO: "Theft of oil and gas is a serious problem facing one of our state's most vital industries. Those responsible should be prosecuted to the fullest extent of the law. I support increasing the criminal penalties for these crimes. And I support providing prosecutors with new tools targeted at theft of oil and gas.

"House Bill 3291 shares these goals, but unfortunately its overly broad language creates severe criminal penalties for conduct that may have nothing to do with theft of oil and gas. For example, the bill would make it a second-degree felony to possess, purchase, or sell oil or gas without the proper Railroad Commission permit. Under current law, such a violation results only in a civil fine — like most other violations of state permitting rules. But under House Bill 3291, the penalty for not having the appropriate Railroad Commission paperwork could be as much as 20 years in prison. And because the crime created by the bill requires only a reckless mental state, a felony conviction could be obtained even if the defendant did not know his paperwork was out of order. Turning paperwork errors into felonies is not the right solution to the very real problem of oil and gas theft."

RESPONSE: **Rep. Richard Peña Raymond**, the bill's author, was unavailable for comment.

Sen. Judith Zaffirini, the Senate sponsor, said: "I am disappointed that this legislation will not become law this year, especially because it would have helped combat organized criminals who are stealing millions of dollars' worth of oil and gas annually.

"I am glad that the governor recognizes the seriousness of the oil and gas theft epidemic in our state, but I respectfully disagree with his concern that the bill would result in 'turning paperwork errors into felonies.' When similar concerns were raised during the legislative process, law enforcement and oil and gas producers worked

with us to ensure that innocent, common activities would not be captured by the bill. We believe the bill was tailored to focus on the bad actors and would not result in the prosecution of innocent activity or persons who simply have the wrong paperwork.

"I plan to refile the bill next session and work closely with Gov. Abbott and the relevant stakeholders to make sure all concerns are addressed."

NOTES: The HRO analysis of HB 3291 appeared in the April 23 *Daily Floor Report*.

Contact information in agreement to allow shooting across property lines

HB 3390 by Larson (Perry)

DIGEST: HB 3390 would have added to information that currently is required in agreements among property owners that provide a defense to prosecution for illegally discharging a firearm across a property line while hunting or recreationally shooting. The bill would have required that the telephone number and mailing address of the hunter or recreational shooter appear in the agreement.

GOVERNOR'S REASON FOR VETO: "Under current law, it is already a crime for hunters to fire across a property line unless the hunter owns both plots of land or has a written agreement with the property owner on either side of the property line. House Bill 3390 would require expanded agreements that contain more of the hunter's personal information. These new requirements could result in increased prosecution of hunters who are attempting to comply with the law but are not aware the law has changed. There are already severe criminal and civil penalties for the dangerous discharge of a firearm. Increased regulation of hunters is not necessary."

RESPONSE: **Rep. Lyle Larson**, the bill's author, said: "The law provides that adjacent property owners must have a written agreement to fire across a property line, and this bill was an attempt to ensure that the parties who have an agreement include a telephone number and address so they can maintain open and neighborly communication and prevent potentially deadly incidents from occurring. This bill was simply an attempt to provide a mechanism for adjacent property owners to communicate with one another about such an agreement."

Sen. Charles Perry, the Senate sponsor, had no comment on the veto.

NOTES: The HRO analysis of HB 3390 appeared in Part One of the April 27 *Daily Floor Report*.

Changing the requirements for filing personal financial statements

HB 3511 by S. Davis (Huffman)

DIGEST: HB 3511 would have made changes to personal financial statements filed with the Texas Ethics Commission by state elected and appointed officers, candidates for office, and state political party chairs. It would have specified the conditions under which a filer had to list community property and would have removed a requirement to include an account of a spouse's financial activity if the filer had actual control over that activity.

The bill also would have allowed a person who electronically filed verified financial statements with the Texas Ethics Commission or other filing authorities to do so without including a notarized affidavit if the person had requested and used an electronic filing password. An affidavit swearing that the report was correct and complete would have been required to accompany a financial statement not filed electronically. A person submitting a financial statement under the bill would have been considered to have done so under oath and could have been subject to prosecution for perjury.

GOVERNOR'S REASON FOR VETO: "Texans deserve accountability and transparency from their public officials. House Bill 3511 weakens the ethics laws governing officeholder financial disclosures. I cannot allow that."

RESPONSE: **Rep. Sarah Davis**, the bill's author, said: "As originally written, HB 3511 would have permitted a person electronically filing a personal financial statement to file without including a notarized affidavit if the person had requested and used an electronic filing password. This would have streamlined and improved this process, making it easier for individuals to meet their filing obligations. I am disappointed that HB 3511 was amended in the Senate during the final days of session, causing the validity of the bill to be called into question. The original intent of the legislation was never to create a 'spousal loophole.' I look forward to working on this issue in the future and hopefully passing legislation to improve the personal financial statement filing process."

Sen. Joan Huffman, the Senate sponsor, had no comment on the veto.

NOTES: The HRO analysis of HB 3511 appeared in Part Two of the May 1 *Daily Floor Report*.

Allowing expunction of criminal records based on offenses, not arrests

HB 3579 by Alonzo (Rodríguez)

DIGEST: HB 3579 would have revised the law on expunction of criminal records to make requests and the granting of expunctions based on offenses, not arrests. It also would have expanded authorization to request the sealing of criminal records under an order of non-disclosure to certain persons who were convicted of fine-only misdemeanors or who received a dismissal of charges after a deferral of a disposition for such misdemeanors. The bill would have authorized judges, in some cases, to amend the conviction record for a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) to reflect a conviction for a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

GOVERNOR'S REASON FOR VETO: "I previously signed Senate Bill 1902, which increases the ability of those who have been convicted of misdemeanors to have their criminal records sealed from public disclosure. The purpose of that legislation is to expand the employment prospects of individuals whose minor criminal records may be unduly limiting their ability to pursue an honest living.

"House Bill 3579 has a similar goal, but it goes too far by allowing courts to expunge dismissed criminal charges — including serious felony charges — even when the defendant was convicted of other, related charges. This would be problematic for two reasons. First, dismissal of a criminal charge is not necessarily an indicator of the defendant's innocence of that crime, particularly when a multi-charge arrest results in a plea agreement. Second, unlike orders of non-disclosure, which seal records from public view, expunction seals the records even from law enforcement. Under House Bill 3579, even those convicted of serious felonies could have parts of their criminal record expunged. This would deprive law enforcement of information about the offense history of habitual criminals, which may be useful in the investigation of future crimes."

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

Sen. José Rodríguez, the Senate sponsor, said: "HB 3579 was a 'smart on crime' bill that had three main elements. It (1) allowed for the expunction of an individual charge for a multiple-charge arrest; (2) updated the system for sealing criminal records by providing orders of non-disclosure for fine-only misdemeanors to eligible individuals; and (3) incentivized community supervision by reducing a state-jail felony conviction after an individual serves state jail probation to a class A misdemeanor.

"HB 3579 had strong bipartisan support and overwhelmingly passed both chambers. The bill had strong support from conservative and progressive criminal justice advocates and stakeholders alike with no registered opposition.

"Although I am disappointed by the governor's veto of this significant legislation, I am pleased to note that the governor did not object to the other main elements that did not relate to expunction. In addition, the governor's statement implies that he would support expunction for an individual charge in a multi-charge arrest if the defendant is innocent of that individual charge. I look forward to working with the governor's office on this issue to craft legislation for the 2017 regular session."

NOTES: The HRO analysis of HB 3579 appeared in Part Five of the May 11 *Daily Floor Report*.

Revising personal financial statements; disclosing conflicts of interest

HB 3736 by S. Davis (Huffman)

DIGEST: HB 3736 would have made changes to personal financial statements filed with the Texas Ethics Commission by state elected and appointed officers, candidates for office, and state political party chairs. It would have specified the conditions under which a filer had to list community property and would have removed a requirement to include an account of a spouse's financial activity over which the filer had actual control.

The bill would have added requirements for a filer to include on financial statements information about goods and services provided under one or more written contracts with a governmental entity or a person who was fulfilling a contractual obligation to a governmental entity. The disclosure would have been required if the aggregate cost of goods or services sold by the filer, or a business owned at least 50 percent by the filer, exceeded $10,000 in the year covered by the financial report. Members of the Legislature who provided bond counsel services to a state entity or political subdivision would have been required to disclose information about their fees.

HB 3736 also would have required state agency governing board members and governing officers to disclose conflicts of interest and refrain from participating in decisions on matters for which they had a conflict of interest. An individual who knowingly failed to disclose a conflict of interest and refrain from participation would have committed a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000). The written disclosures would have been public information and filed with the Texas Ethics Commission.

GOVERNOR'S REASON FOR VETO: "At the beginning of this legislative session, I called for meaningful ethics reform. This legislation does not accomplish that goal. Provisions in this bill would reduce Texans' trust in their elected officials, and I will not be a part of weakening our ethics laws. Serious ethics reform must be addressed next session — the right way. Texans deserve better."

RESPONSE: **Rep. Sarah Davis**, the bill's author, said: "The objective of HB 3736 was to require members of the governing board of an executive branch state agency to disclose any conflict of interest and refrain from participating in any decisions related to these conflicts. This would further promote transparency by ensuring executive agency leaders are not making decisions on issues with which they have a personal financial interest and hold these individuals to similar standards as legislators and state employees. Unfortunately, an amendment was added to the bill in the Senate during the final days of session that undermined HB 3736. It is a shame that the important and necessary provisions of the bill, as originally written, were prevented

from taking effect because of the 'spousal loophole' added in the Senate, but I look forward to continuing my efforts to increase transparency and improve ethics in Texas going forward."

Sen. Joan Huffman, the Senate sponsor, had no comment on the veto.

NOTES: The HRO analysis of HB 3736 appeared in Part Two of the May 8 *Daily Floor Report*.

Use of energy transportation reinvestment zone funds by counties

HB 4025 by Keffer (Uresti)

DIGEST: HB 4025 would have allowed a county affected by oil and gas exploration and production to use money from a county energy transportation reinvestment zone to provide funding for one or more transportation infrastructure projects located in the county, rather than only in the energy transportation reinvestment zone.

The bill would have changed how grants would be allocated to counties from the state's transportation infrastructure fund, as well as the percentage of transportation infrastructure grant money a county could have used to administer a county energy transportation zone.

GOVERNOR'S REASON FOR VETO: "In the 2011 statewide election, the voters of Texas rejected a constitutional amendment that would have given counties the authority to create tax-increment reinvestment zones. The Legislature's attempts to confer this authority on counties without a constitutional amendment have been found by three separate Attorney-General opinions to violate article VIII, section 1(a) of the Texas Constitution. House Bill 4025, in part, is an attempt to do what the Texas Constitution and multiple Attorney-General opinions prohibit. If the Legislature wants counties to have the authority to create tax-increment reinvestment zones, it must again ask the voters to amend the Constitution."

RESPONSE: **Rep. Jim Keffer**, the bill's author, said: "This bill sought to remedy known constitutionality concerns expressed by the attorney general's office about the current statute creating county energy transportation reinvestment zones in Opinion No. KP-0004. While I understand the governor's hesitation to put a bill on the books that could be potentially unconstitutional, this bill was an effort that included input and wording from many parties, including the attorney general's office, to solve those concerns about constitutionality. It is my hope that the governor's office will be involved moving forward to help improve this effective transportation program."

Sen. Carlos Uresti, the Senate sponsor, said: "The oil and gas industry in Texas continues to produce heavily in both the Eagle Ford Shale and Permian Basin energy sectors despite low oil prices. Oil and gas activity and truck traffic in these areas has led to the rapid degradation of county roads that were not built to withstand the massive weight and volume of the truck traffic. In the 83rd legislative session, the Legislature appropriated $225 million and created a program to distribute the funding to counties for road maintenance and construction. HB 4025 would have built on our work in the 83rd session by updating the formulas for distributing future appropriations to ensure that the funding is more focused on the counties that are actually suffering the most from road damage attributable to the energy sector.

"HB 4025 also would have modified current law for county energy transportation reinvestment zones based on an attorney general's opinion of the constitutionality of their structure. The veto of HB 4025 does not benefit anyone, while hurting those in the energy sector who use county roads for business, to go to the market, church, or the ball field – including the oil and gas industry itself, which was supportive of the measure. I look forward to working with the governor on this issue during the interim to craft a solution that can be passed in the 85th legislative session."

NOTES: HB 4025 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Additional oath of office for certain municipal court judges

HB 4103 by Guillen (Garcia)

DIGEST: HB 4103 would have allowed a municipal court judge who continued to serve for another term of office to continue, absent action by the appointing authority, to perform duties of the office without taking an additional oath or affirmation.

GOVERNOR'S REASON FOR VETO: "The Texas Constitution requires all elected or appointed officers to take the following oath: 'I, _______ do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _______ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.' The oath is commonly re-taken when an existing officeholder begins a new term. House Bill 4103 would exempt municipal judges from the need to take the oath for a subsequent term of office. Judges, of all offices, should never be excused from the obligation to swear to preserve, protect, and defend the Constitution."

RESPONSE: **Rep. Ryan Guillen**, the bill's author, said: "Texas law allows for appointed municipal judges to be automatically reappointed without further municipal action, an option that many cities currently use. Without formal action on their reappointment, and because they previously took and filed the oath of office, these municipal judges subsequently rarely retake the constitutional oath, an apparent constitutional and statutory requirement. This bill would have helped protect the integrity of the rulings of these judges from unscrupulous legal challenges aimed at exonerating everyone who's come before these courts."

Sen. Sylvia Garcia, the Senate sponsor, said: "I am disappointed that Gov. Abbott vetoed HB 4103, an attempt to clarify whether or not municipal judges are required to retake the oath of office when they are reappointed by operation of law. The governor appears to have misread this bill, which would not have excused these judges from the obligation to swear to preserve, protect, and defend the Constitution, as the governor asserted in his veto proclamation, because these judges have already taken the oath when they initially enter the office. Rather, the bill would have resolved the current confusion in state law and protected the state and other governmental entities from the possibility of the costs of litigating this issue in the future."

NOTES: HB 4103 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Use of diagnostic classification systems for mental health services

HCR 84 by Clardy (Nichols)

DIGEST: HCR 84 would have directed licensure boards for the state's mental health providers to use the Diagnostic and Statistical Manual of Mental Disorders, the International Classification of Diseases, and any other appropriately recognized diagnostic classification systems for the evaluation, classification, and treatment of mental health disorders and in connection with claims for payment or reimbursement from a health insurer. The resolution would have stated that publication of a diagnostic and statistical manual of mental disorders has increased innovation in psychiatric treatment and clarified diagnosis of mental illness.

The resolution also would have stated the benefits of good mental health and appropriate mental health services and would have affirmed the laws and rules applicable to licensed mental health care professionals.

GOVERNOR'S REASON FOR VETO: "I agree with the Legislature's statements, expressed in House Concurrent Resolution No. 84, regarding the importance of good mental health for all Texans. However, Article III, Section 30 of the Texas Constitution requires all laws to be passed as bills. New law cannot be made by concurrent resolution. Because House Concurrent Resolution No. 84 purports to direct the actions of state agencies in the manner of a law, it goes beyond the proper bounds of a concurrent resolution."

RESPONSE: **Rep. Travis Clardy**, the bill's author, had no comment on the veto.

Sen. Robert Nichols, the Senate sponsor, responded that he agrees with the governor's veto.

Requesting criminal record order of nondisclosure if conviction set aside

SB 130 by West (Canales)

DIGEST: SB 130 would have added to those who could ask a court for an order of nondisclosure to prevent their criminal records from being disclosed to the public. Authorization for the requests would have been expanded from certain criminal defendants placed on deferred adjudication, a form of probation, to certain other probationers. Under the bill, requests could have been made under certain circumstances by those who had been placed on community supervision and had their probation terms reduced or terminated by a judge under current law after serving at least one-third of the term or two years, whichever was less, and had their convictions set aside.

GOVERNOR'S REASON FOR VETO: "After convicted criminals complete their sentences and repay their debts to society, their criminal records do not disappear. The reality for some individuals who have been charged with relatively minor crimes is that their records can follow them forever, making it difficult for them to find employment and reintegrate into society. That is why I previously signed into law Senate Bill 1902, which authorizes courts in limited circumstances to seal the records of certain first-time misdemeanor offenders, to ensure that a minor criminal record is not a road block to an individual becoming a productive member of society even decades later. But the State's interest in reintegrating one-time, petty offenders must be balanced with an employer's right to know what they are getting when they make a hire. Senate Bill 130 goes too far because it would permit individuals who have committed even serious felonies (including crimes like manslaughter, arson, enticing of a child, and improper photography of a minor) to hide their heinous acts from employers. And it places no limits on the number of times repeat offenders can attempt to erase their past."

RESPONSE: **Sen. Royce West**, the bill's author, said: "There are several reasons for my disappointment with the governor's veto of SB 130. SB 130 would have allowed the records of an offense for which the conviction was set aside by the courts to be sealed under the guidelines provided for an order of nondisclosure in the exact same manner as would take place if the subject received deferred adjudication. Gov. Abbott cited the need for balance between a former offender's ability to find employment and the employer's right to know whom they are hiring. But it is important to note that current Texas law that provides for certain offenses to be sealed through an order of nondisclosure also allows applicants to deny the existence of an offense that has been sealed. However, certain licensing agencies and the courts have access to sealed records, a safeguard to be considered in the case of future offenses.

“Under a set-aside, a judge in a court setting agrees to dismiss or ‘set aside’ a person’s conviction after that person has satisfactorily completed all or a certain portion of his term of community supervision, commonly called probation. The problem lies in the fact that there is not a disposition available under current Texas law for the records of a conviction that has been dismissed through the provision of a set-aside, which is found in Texas Code of Criminal Procedure, Art. 42.12, sec. 20(a).

“If a person received deferred adjudication, many offenses are eligible to be sealed through an order of nondisclosure. A person who received deferred adjudication is also eligible to receive a pardon, which would allow the records of the offense to be expunged. Many serious offenses involving crimes against persons, including sex offenses, are not eligible for an order of nondisclosure.

“Even a person who is convicted of the most ‘heinous’ crimes, such as murder and those named by the governor in his veto message, like arson and manslaughter, are technically eligible to apply for relief through a pardon. There is not a means of relief available for a person whose conviction — with the facts of the offense known — the court decided could be dismissed.

“Secondly, just as with the order of nondisclosure now available for persons who have completed deferred adjudication, the person who received a set-aside would also have to petition the court. The records would not have been automatically sealed. The petition could have been contested by prosecutors or otherwise denied by the court. And with the heightened attention now paid to offenses involving children, it is questionable that a judge would grant a set-aside or seal the records of such a defendant. SB 130 would have been a perfectly safe remedy consistent with the intent of the statute that provides for judicial clemency through the instrument of a set-aside.

“SB 130 passed the Senate 31-0 and the House 137-5. I believe the premise for the veto of SB 130 was based on hypothetical, worse-case offenses, rather than relying on the judgment of the courts to decide on the facts presented, based on the intent of longtime, existing Texas law.”

Rep. Terry Canales, the House sponsor, said: “SB 130 is an important bill which aims to create an avenue for Texans to seal their criminal histories. Ten years ago, in *Cuellar v. State* (70 S.W.3d 815 (Tex. Crim. App. 2002)), the Texas Court of Criminal Appeals coined the term ‘judicial clemency’ for the legal remedy described in Art. 42.12, sec. 20(a), Code of Criminal Procedure. The court clarified that judicial clemency is a discretionary measure that a trial court may grant an offender who

successfully completed his/her community supervision if the 'trial judge believes' the offender 'is completely rehabilitated and is ready to re-take his place as a law-abiding member of society.'

"In other words, judicial clemency is granted based on the offender's showing evidence of reform or rehabilitation. Judicial clemency is an important legal remedy given to the judges with the intent to empower them to make this important decision. SB 130 would not create a system where serious felonies were hidden from employers but would empower judges to make the important decisions given to them in our state constitution."

NOTES: The HRO analysis of SB 130 appeared in the May 20 *Daily Floor Report*.

Revising school curriculum, limiting instructional material adoptions

SB 313 by Seliger (Aycock)

DIGEST: SB 313 would have required the State Board of Education (SBOE) to narrow the content and scope of the essential knowledge and skills (TEKS) at each grade level for the foundation curriculum. The SBOE would have considered the time required for a teacher to provide comprehensive instruction on a particular standard or skill and the time a typical student would need to master it. The board also would have had to determine whether each standard could be comprehensively taught within the required 180-day school year, excluding testing days.

The bill would have required the SBOE to consider whether state-required assessments adequately assessed a particular standard or skill. After the administration of each such assessment in grades 3-8, the Texas Education Agency would have provided to the student and the student's teachers and parent or guardian a detailed report on the student's performance on each standard or skill and whether the student had mastered it.

The projected cost of new instructional materials proclamations would have been limited to 75 percent of the total amount available for the instructional materials allotment during that biennium. Districts would have been entitled to a biennial, instead of an annual, allotment from the state instructional materials fund and would have received funding in the first year of each biennium.

GOVERNOR'S REASON FOR VETO: "While Senate Bill 313 is intended to provide additional flexibility to school districts when purchasing classroom instructional materials, the bill potentially restricts the ability of the State Board of Education to address the needs of Texas classrooms. Portions of Senate Bill 313 may have merit, but serious concerns were raised about other parts of the bill. I look forward to working with the Legislature and other stakeholders to ensure this issue is vigorously evaluated before next Session."

RESPONSE: **Sen. Kel Seliger**, the bill's author, said: "The State Board of Education (SBOE) is tasked with adopting curriculum standards for public education, known as the Texas Essential Knowledge and Skills (TEKS). There is consensus among educators that the scope of the TEKS is too broad to be reasonably taught within the school year. SB 313 would have developed a framework within which the SBOE would narrow the curriculum, allowing more classroom time for students to develop a depth of understanding through projects, group discussions, and the utilization of critical thinking skills while simultaneously reducing the stress of state-mandated tests on students and teachers.

“The second overarching goal of SB 313 was to limit government control over school district decisions to purchase instructional materials. The bill limited the cost of new books in any proclamation issued by the SBOE to 75 percent of the total distribution of the Instructional Materials Allotment (IMA). The remaining 25 percent balance would have been used to address district-specific needs in either instructional materials or technology. Ultimately, the bill would have maintained maximum flexibility for local school districts to spend IMA funds where they were most needed.”

Rep. Jimmie Don Aycock, the House sponsor, said: “Repeatedly during the interim and session, my colleagues and I heard that the Texas Essential Knowledge and Skills were too broad and unmanageable and difficult to cover during one single instructional year. The bill directed the board to consider these concerns and possibly revise the TEKS so that our students could delve deeper into content instead of just racing through a checklist of standards. Those who claimed the bill was a backdoor to Common Core obviously did not read the bill because the State Board of Education retained control of the standards and the Texas Education Code still clearly prohibits the implementation of Common Core in Texas. Sadly, it’s our students and teachers who will suffer.

“The Instructional Materials Fund was established in 2011 by merging the textbook money in the Available School Fund and the technology allotment to provide an allotment to districts to pay for instructional materials and technology. The bill directed the board to be thoughtful when issuing proclamations for new materials by not allowing the cost of the new books to exceed 75 percent of the instructional materials allotments so that districts would have available funds for technology, as they had in years past. If the board does not do this, then districts are forced to choose between not purchasing instructional materials or cutting other instructional programs to support technology needs in our supposed 21st-century classrooms.

“The fear of Common Core and a flat misunderstanding of the legislation by some led to an unfortunate veto of a much-needed bill.”

NOTES: The HRO analysis of SB 313 appeared in Part One of the May 25 *Daily Floor Report*.

Temporary detention of a person with mental illness

SB 359 by West (Workman)

DIGEST: SB 359 would have allowed certain medical facilities to detain for up to four hours a person with mental illness who posed a risk to self or others. The facility would have been required to release the person at the end of the four-hour period unless staff or a physician at the facility arranged for a peace officer to take the person into custody or an order of protective custody was issued.

A facility's governing body could have adopted and implemented a written policy providing for the facility or a physician to detain a person temporarily under certain circumstances. It would have applied to a person who had voluntarily requested treatment or who lacked the capacity to consent if the person expressed a desire to leave the facility or attempted to leave the facility before the examination or treatment was completed and if a physician at the facility had reason to believe and did believe that:

- the person had a mental illness that presented a substantial risk of serious harm to the person or to others unless the person was immediately restrained; and
- there was not sufficient time to file an application for emergency detention or for an order of protective custody.

A facility's temporary detention policy would have required that:

- facility staff or a physician who intended to detain the person notify the person of that intention;
- the decision to detain the person be documented in the person's medical record; and
- the period of detention be less than four hours after the time the person first expressed a desire to leave or attempted to leave.

Temporary detention would not have been considered involuntary psychiatric hospitalization and would not have applied to a person who had been transported to the facility for emergency detention under Health and Safety Code, ch. 573.

A physician, person, or facility that either detained or did not detain a person under its policy while acting in good faith and without malice would not have been civilly or criminally liable for that action. A facility also would not have been civilly or criminally liable for its governing body's decision on whether to adopt a detention policy.

GOVERNOR'S REASON FOR VETO:

"The Fourth, Fifth, and Fourteenth Amendments to the United States Constitution limit the state's authority to deprive a person of liberty. Under our constitutional tradition, the power to arrest and forcibly hold a person against his or her will is generally reserved for officers of the law acting in the name of the people of Texas. By bestowing that grave authority on private parties who lack the training of peace officers and are not bound by the same oath to protect and serve the public, SB 359 raises serious constitutional concerns and would lay the groundwork for further erosion of constitutional liberties.

"Medical facilities have options at their disposal to protect mentally ill patients and the public. Many hospitals already keep a peace officer on site at all times. For smaller facilities, law enforcement are always just a phone call and a few minutes away. Medical staff should work closely with law enforcement to help protect mentally ill patients and the public. But just as law enforcement should not be asked to practice medicine, medical staff should not be asked to engage in law enforcement, especially when that means depriving a person of the liberty protected by the Constitution."

RESPONSE:

Sen. Royce West, the bill's author, said: "I was surprised by the veto. My office had no contact with the governor's office about this bill at any time during the legislative session. SB 359 was supported by the Texas Hospital Association, the Texas Medical Association, and law enforcement, and it enjoyed bipartisan support among legislators. The bill was intended to prevent persons suffering severe mental health episodes from harming themselves or others. It accomplished this by permitting hospitals to adopt a policy allowing them to detain a person who voluntarily requested treatment if a physician at the facility:

- believed the person had a mental illness and that due to that mental illness there was substantial risk of harm to the person or to others; and
- believed there was not sufficient time to file an application for emergency detention or order of protective custody.

"That decision and the reasons for it were to be documented by the physician and included in the person's medical record. Such a detention would not have lasted longer than four hours."

Rep. Paul Workman, the House sponsor, had no comment on the veto.

NOTES:

The HRO analysis of HB 3677 by Workman, the House companion to SB 359, appeared in Part Five of the May 8 *Daily Floor Report*.

Allowing counties to consider bidder's location in awarding contracts

SB 408 by Rodríguez (Blanco)

DIGEST: SB 408 would have allowed counties to provide preferences to local bidders for certain contracts if their bids were within 5 percent of the lowest bid from a bidder who was not a resident of the county. The bill would have applied to contracts for construction services of less than $100,000 and contracts for other purchases of less than $500,000.

GOVERNOR'S REASON FOR VETO: "Government has an obligation to spend no more of the taxpayers' money than necessary. All government contracts should be competitively bid, and the vendor who offers the best value to the taxpayers should be chosen every time. Senate Bill 408 would authorize counties to reject the best bid and instead spend 5 percent extra in order to select an in-county vendor. The needs of taxpayers should come before the needs of government or vendors. County governments should focus on protecting the public fisc – not steering business to local vendors who are not offering the value the taxpayers deserve."

RESPONSE: **Sen. José Rodríguez**, the bill's author, said: "The governor's veto of SB 408 is disappointing. The bill was passed to support local businesses and allow counties optional additional criteria to use when evaluating bids. SB 408 would have allowed counties to do what cities already are allowed to do – use more than simple cost as the only criterion to assess best value to the community when awarding contracts. Specifically, the bill would have allowed counties to increase local bidder preference from 3 percent to 5 percent on certain contracts.

"In addition, it's worth noting that the bill was permissive. If a county chooses to utilize this tool, state law requires a finding that the local bidder offers the best combination of contract price and additional economic development opportunities.

"Unfortunately, this veto follows the state's trend of denying local communities the ability to make governance decisions. The governor's action does not protect taxpayers. Instead, it interferes with the ability of communities to determine and meet their own needs through their locally elected representatives.

"In this instance, we were looking to ensure that El Paso County had the authority to ensure El Pasoans' local taxpayer dollars continued to fuel our local economy. We look forward to continuing the dialogue around this issue for next session."

Rep. César Blanco, the House sponsor, said: "We are disappointed the governor vetoed legislation which would have helped local economies across the state. This legislation was intended to help create jobs in our local economy, reinvest tax dollars in our county through job creation and revenue, and allows for local control."

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

Funding for students in an optional flexible school day program

SB 496 by Watson (Howard)

DIGEST: SB 496 would have removed a requirement that a school district apply to the commissioner of education to provide a flexible school day program for students who were at risk of dropping out or had dropped out or who met another specified requirement. The bill would have allowed any campus that would benefit from a flexible school day program to implement one.

The commissioner would have been required to ensure that funding for course attendance in a flexible school day program was based on the same instructional hour requirements of the regular program, rather than on the full-time equivalent student basis that requires six hours of student contact time to qualify for a full day of attendance.

SB 496 also would have allowed the use of compensatory education allotment funding to provide child-care services or assistance with child-care expenses for students at risk of dropping out of school or to pay costs associated with services provided through a life skills program. The commissioner would have been required to include pregnancy as a reason for a student's withdrawal from school for the purpose of data entered in the Public Education Information Management System.

GOVERNOR'S REASON FOR VETO: "Currently, a school district can apply to the Texas Education Agency and request permission to offer a flexible school day program for the district's at-risk students. As filed, Senate Bill 496 addressed the financing of these programs. I am supportive of the original intent of the legislation; therefore, I have signed the bill's companion legislation, House Bill 2660.

"Unfortunately, an objectionable piece of legislation that did not ultimately pass on its own merit was added to Senate Bill 496 and significantly changed the bill's focus. Senate Bill 496 was amended to allow a school district to establish a flexible school day for entire campuses without approval from the Texas Education Agency. Allowing districts to drastically change the school calendar without TEA approval could cause unanticipated and untenable problems."

RESPONSE: **Sen. Kirk Watson**, the bill's author, said: "I'm disappointed that SB 496 was vetoed. The bill ultimately contained three important provisions — full funding for flex-time students, additional uses for compensatory education funds, and the ability for whole campuses to participate in the Optional Flexible School Day program. While education reform advocates have repeatedly called for local control on school campuses, Gov. Abbott vetoed SB 496 specifically because of the campus-wide flexibility this bill would have provided.

"Fortunately, Gov. Abbott signed House Bill 2660, the companion bill that requires full funding for students who participate in the Optional Flexible School Day program. This is an important mechanism to provide equitable funding for students who want or need a more flexible school calendar."

Rep. Donna Howard, the House sponsor, said: "On numerous occasions, including during his State of the State Address, Gov. Abbott has called for the return of 'genuine local control to our schools.' His veto of SB 496 does the exact opposite, retaining unnecessary bureaucracy and inflexibility.

"While I am pleased that the primary intent of SB 496 — calling for the Texas Education Agency to calculate average daily attendance for flex-time students in the same manner as it does for regular program students — was passed and signed into law as HB 2660, there were a variety of worthy amendments found in the Senate bill but not the House version.

"Among the language in the final version of SB 496 was a measure to expand the eligibility for school districts to offer flexible school day programs. This would provide local school districts with another optional tool to meet the needs of their students.

"I am most disappointed by the loss of a measure that would allow for the use of compensatory education allotment funding to provide wraparound support for teen parents who are at risk of dropping out of school. This bipartisan measure, which was passed out of the House three separate times this session, would give each school district local control over what programs they may implement for drop-out prevention.

"Without a doubt, the clearest victims of this veto are the at-risk students — including some teen parents — who will drop out of school due to a lack of effective services and support."

NOTES: The HRO analysis of SB 496 appeared in Part Two of the May 24 *Daily Floor Report*.

Policies allowing state employees to work from home

SB 1032 by Watson (Israel)

DIGEST:

SB 1032 would have allowed a state agency head to adopt a policy authorizing a supervisor to permit an employee to work from an alternative work site, including the employee's residence, as the employee's regular or assigned temporary workplace. An employee who worked from an alternative site would have been required to enter into an agreement that established the employee's responsibilities and requirements for communicating with and reporting to the agency. The agreement could have been revoked if the position was no longer suitable for an alternative work site or the employee violated the agreement.

The bill would have allowed an employee working from an alternative site, with a supervisor's approval, to complete all or part of the employee's working hours, including compensatory time and overtime, at times other than the regular agency working hours of 8 a.m. to 5 p.m. Such an employee would have been subject to existing agency compensatory and overtime policies. The Texas Department of Information Resources would have been required to compile and submit a report biennially to the Legislature on alternative work site policies and usage.

GOVERNOR'S REASON FOR VETO:

"Under current law, state employees are authorized to maintain flexible work schedules — including work from home, where appropriate — if the head of their state agency provides written approval. This policy provides flexibility for those employees who need it while imposing management controls that minimize the potential for abuse of these privileges.

"Senate Bill 1032 takes this process further and would allow an employee's immediate supervisor, rather than the agency head, to authorize flexible schedules and work from home. This would result in reduced accountability, inconsistent application, and greater potential for abuse. The bill's provisions regarding overtime and compensatory time earned away from the office are also problematic. Authorizing employees to earn overtime or compensatory time for work performed at home raises legitimate record-keeping and management concerns."

RESPONSE:

Sen. Kirk Watson, the bill's author, said: "I am greatly disappointed that the governor vetoed SB 1032 because it's a common-sense solution to many of the problems the state of Texas and the city of Austin face, including traffic congestion, retaining top employees, and reducing facility costs. And, contrary to the governor's assertion, SB 1032 would have provided structure, consistency, and accountability for agencies that already are allowing their employees to telework.

"Traffic congestion is particularly problematic in Austin, where the state is one of our largest employers. To solve this problem, we have to take an "everything AND the kitchen sink" approach. Sadly, by vetoing this bill, Gov. Abbott took one option off the table — an option that was essentially free. This means we have to look to different, more expensive options to reduce the congestion that impacts our citizens' quality of life and our state's economic development."

Rep. Celia Israel, the House sponsor, said: "SB 1032 would have allowed state agencies to reduce costs and enhance productivity while also improving congestion in areas with high concentrations of government employees. I am deeply disappointed that Gov. Abbott chose to veto this legislation because it would have meant so much to my district, where nearly 5,000 state employees live. Not only would state employees be able to avoid wasting time in traffic every day by telecommuting one or two days a week, but all commuters would benefit from fewer cars on the road.

"Although the governor cited concerns about state employees' accountability, many state agencies already are taking advantage of telecommuting practices, and SB 1032 would have brought more accountability and consistency to preexisting programs. Under the provisions of the bill, employees would have been required to sign contracts promising to meet all of their work-related responsibilities. The bill would have also subjected telecommuters to increased oversight.

"I am saddened that we were unable to make this practical solution to our worsening traffic problems a reality. Telecommuting may not have been an automatic fix, but it would have reduced congestion without costing taxpayers a dime, and as Texas drivers are well aware, we need all the help we can get."

NOTES: The HRO analysis of SB 1032 appeared in Part Two of the May 23 *Daily Floor Report*.

Voting-by-mail requirements, including canceling an application

SB 1034 by Rodríguez (R. Miller)

DIGEST: SB 1034 would have allowed a person who was eligible to submit an application to vote by mail to apply to receive all ballots for elections in an even-numbered year using the same application submitted for a ballot in the November general election of an odd-numbered year.

The secretary of state by rule could have redesigned the official carrier envelope by printing information about certain requirements on a separate sheet and styling the signature box to require the voter to have signed over the flap.

SB 1034 would have specified that an application to vote by mail for a certain election that was canceled at the voter's request would not cancel the application's validity for subsequent elections if the application applied to ballots for more than one election.

GOVERNOR'S REASON FOR VETO: "The integrity of the vote-by-mail process must be strengthened, not called into question. Amendments added to Senate Bill 1034 late in the legislative process would create confusion as to how counties should administer mail-in ballot applications. To ensure this important matter is addressed with the clarity it deserves, the Legislature should reconsider the issue and eliminate the uncertainty and ambiguity contained in this bill."

RESPONSE: **Sen. José Rodríguez**, the bill's author, said: "The amendment by Rep. Miller referenced in the governor's veto statement refers to the mail-in ballot application in November for the odd year. There was a concern by one county that a mail-in ballot application for the November election in an even-numbered year could be submitted at the beginning of the odd-numbered year. The intent of the amendment was to be limited to the 60-day application period prior to the odd-year November elections. It was not intended to allow someone to receive mail-in ballot applications for the entire odd year and the year following. Sixty days is the standard period of time to apply for a mail-in ballot under Election Code, sec. 84.007. Along with Sen. Bettencourt, I established this intent in the legislative record. Furthermore, it was our understanding that the secretary of state could have addressed any ambiguity through rulemaking or county guidelines. We look forward to working with the governor's office to clear up any remaining confusion and pass this bill next session."

Rep. Rick Miller, the House sponsor, said: "We understand the reasoning behind the governor's veto, as clarification of the Election Code is an ultimate goal. As we were able to add the intent of the original legislation to another bill, we are fine with the outcome of the process."

NOTES: SB 1034 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Creating a matching grant program for certain federal block grants

SB 1408 by Lucio (T. King)

DIGEST: SB 1408 would have required the Texas Department of Agriculture (TDA) to create a community development matching grant program, subject to available funds, to facilitate community and economic development in certain counties and municipalities. TDA would have provided matching grants to help finance various community development programs as specified in the bill or as determined by the department with assistance from the Texas Rural Health and Economic Development Advisory Council.

A county or municipality that qualified as a non-entitlement area under the federal community development block grant program and that was in good standing with TDA and the U.S. Department of Housing and Urban Development would have been eligible to apply for a matching grant under the bill. Eligible counties or municipalities could have submitted a single-jurisdiction application on their own or a multi-jurisdiction application. Only one of the counties or municipalities in a multi-jurisdiction project would have been primarily accountable for the financial compliance and performance requirements of the program.

TDA would have been required to give preference to a multi-jurisdiction application if the project would mutually have benefitted the residents of all communities applying. A county or municipality that applied for a multi-jurisdiction grant would not have been allowed to submit a single-jurisdiction application for the same project.

GOVERNOR'S REASON FOR VETO: "Senate Bill 1408 creates new authorities to issue state funds to local units of governments similar to, and in some cases identical to, grants already made under the federal Community Development Block Grant program. The stated intent of the new programs is to offset reductions in federal funding with new state funding. Our federal government's addiction to spending Texas taxpayer dollars must be brought under control, and when it is, the State of Texas should not find ways to tax our citizens to continue funding services our federal elected officials have deemed worthy of curtailing."

RESPONSE: Neither **Sen. Eddie Lucio**, the bill's author, nor **Rep. Tracy King**, the House sponsor, had a comment on the veto.

NOTES: The HRO analysis of SB 1408 appeared in Part Two of the May 24 *Daily Floor Report*.

Authorizing THECB to charge fees, maintain transcript repository

SB 1655 by West (Morrison)

DIGEST: SB 1655 would have authorized the Texas Higher Education Coordinating Board to establish fees to cover all or a portion of the board's costs associated with issuing, maintaining, or revising a certificate of authorization or certificate of authority for certain private and out-of-state public postsecondary educational institutions. The bill would have capped fees at certain levels.

The coordinating board would have been required to maintain a repository for student transcripts from closed institutions that had been authorized to operate under a certificate of authorization or certificate of authority and could have established a fee for that purpose. If the fees were not sufficient to cover costs, the board could have discontinued its maintenance of the repository unless adequate state funding was provided. The board also would have been authorized to charge a fee to students requesting transcript copies not to exceed actual costs. A closed or closing institution would have been required to provide its student transcript records to THECB.

GOVERNOR'S REASON FOR VETO: "The Texas Higher Education Coordinating Board already has the legal authority to perform the services described in Senate Bill 1655. The primary purpose of the bill is to raise more revenue for the Board by creating new fees that will ultimately be paid for by students through increased tuition. These fees would be unnecessary burdens on institutions of higher education and their students. The Board should operate within its existing resources."

RESPONSE: **Sen. Royce West**, the bill's author, said: "Different from the reason given for the governor's veto of SB 1655, the objective of the bill was not to raise revenue, but to increase customer service and transparency. Unfortunately, Gov. Abbott didn't see the customer involved in this legislation (the student) and the need to protect them from unscrupulous career school operators.

"The primary goal of SB 1655 was to protect Texas students who attend career colleges by providing the resources needed to enhance oversight and preserve student transcripts in instances when an institution fails.

"The number of students attending career colleges in Texas has increased by 230 percent since 2008, from 34,772 to 114,743 in 2014. Students at these schools are vulnerable to sudden closures due to mismanagement, financial weakness, or other difficulties. Since 2012, 35 career colleges operating in Texas have closed.

"As recently as April 26, 2015, Corinthian Colleges announced that they would close

28 campuses nationwide. Nearly 150 Texas students will be impacted. Last summer, more than 1,200 students at Anamarc College in El Paso and Santa Teresa, New Mexico, were left in the cold after more than 50 Federal Bureau of Investigation agents closed down the school and seized school records.

"SB 1655 was constructed to address this issue by providing funding for the addition of staff dedicated to the oversight of career schools, enabling staff to conduct more site visits to institutions to observe the institution's operation, review annual compliance report information, expand follow-up on student complaints, investigate institutions' financial viability, and monitor potentially fraudulent institutions. Currently, the Texas Higher Education Coordinating Board (THECB) is staffed with only two persons assigned to the oversight of more than 300 career colleges now operating in Texas.

"SB 1655 would also have created a repository for standardized transcripts at THECB in the event that a career college went out of business or withdrew from the state. Currently, students often face difficulties obtaining their transcripts from a defunct school. This presents a problem when they attempt to transfer. The repository would have ensured student access to their transcripts.

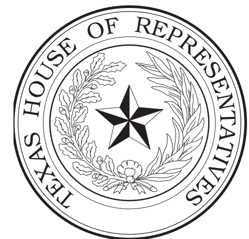
"The impact of the proposed fees would have been targeted and limited. Under coordinating board estimates, the statewide amount of fees collected would have been between $281,000 and $378,200 per year. If career schools passed the fee costs on to students, it would have amounted to just $2.45 to $3.29 per student at current enrollment levels.

"In our discussion with THECB representatives, they confirmed that the transcript problem exists. However, they also stated that the agency does not have the resources needed to address the concern. SB 1655 would have provided funds to administer the program.

"I would request that during the interim, Gov. Abbott reconsider the problems that SB 1655 sought to address in properly monitoring the actions of career colleges. I also encourage the coordinating board to prioritize the protection of our students from unscrupulous career school operators."

Rep. Geanie Morrison, the House sponsor, could not be reached for comment on the veto.

NOTES: SB 1655 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.



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