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HOUSE RESEARCH ORGANIZATION

focus report

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Vetoes of Legislation — 77th Legislature

Gov. Rick Perry vetoed 82 bills approved by the 77th Legislature during its 2001 regular session. The vetoed measures included 60 House bills and 22 Senate bills.

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

A summary of the governor's line-item vetoes to SB 1 by Ellis, the general appropriations act, will appear in the upcoming House Research Organization State Finance Report Number 77-3, *The General Appropriations Act for Fiscal 2002-2003*.

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Restricting reports required of public school classroom teachers

HB 106 by Gutierrez (Zaffirini)

DIGEST:

HB 106 would have required local school boards to adopt policies limiting the number of written reports by public school classroom teachers to those concerning student grades on exams or assignments; student grades at the end of a reporting period; a textbook report; a unit or weekly lesson plan; an attendance report; a report required for accreditation review; any other report specifically required by law or State Board of Education rule; and any other report directly related to a teacher's professional classroom duties. A school board would have had to review teacher paperwork requirements and transfer certain reporting tasks to non-instructional staff. A school district would not have been precluded from collecting additional essential information required by state or federal law.

GOVERNOR'S REASON FOR VETO:

"Data on student performance, financial matters, school safety, and other measures of educational improvement are vital, not only for the state, but for school districts as well. While the goal of House Bill No. 106 is laudable, this legislation would substantially undermine local control by limiting the authority of a school district to request information from teachers regarding issues affecting the operation of schools and the education of children. Local control of our public schools requires authority to be vested in the locally elected school board.

"The objective of reducing paperwork and administrative burdens on teachers is already addressed in current law. Texas law contains provisions to reduce paperwork and limit the amount of reporting required of governmental entities. Texas has also made great strides in reducing the number of rules and regulations placed on school districts by eliminating duplicative and unnecessary requirements. Texas also leads the nation in the number of waivers granted under the federal Ed-Flex statute, which reduces regulatory requirements imposed by federal law.

"Local officials are in the best position to determine what information is necessary for teachers to report."

RESPONSE:

Rep. Roberto Gutierrez, author of HB 106, said: "The governor listened more to his staff members rather than better communicating with state legislators, who brought forth important legislation on behalf of the constituents and

taxpayers of the state of Texas. Language in the governor's veto proclamation relates only to school districts and not to teachers. The bill clearly gave school boards the authority to ask teachers to adhere to duties and requirements other than those specified as long as they were within their job description. The enrolled version used the same language that appeared in the Texas Education Code prior to its modification in 1995. Let us not forget that in 1984, a governor messed around with teachers, and that governor was not reelected."

Sen. Judith Zaffirini, the Senate sponsor, said: "Addressing concerns of classroom teachers is crucial in recruiting and retaining highly qualified educators. HB 106 would have reinstated the Paperwork Reduction Act and allowed each school district's board of trustees to adopt rules limiting paperwork required of classroom teachers so they could spend more time teaching and less time on administrative duties."

NOTES:

The HRO analysis of HB 106 appeared in Part Two of the April 19 *Daily Floor Report*.

Enhancing the punishment for kidnapping

HB 141 by Wise (Van de Putte)

DIGEST:

HB 141 would have made kidnapping a second-degree felony if the abductor exposed the victim to a risk of serious bodily injury. The bill also would have established a first-degree felony for abducting a person to coerce a third person to perform some act, for holding the victim in a condition of involuntary servitude, or for intentionally and knowingly abducting a person younger than 17 years of age or incompetent.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 141 creates a legal problem by creating a new section in the offense of aggravated kidnapping that already is covered in existing law. The current law includes defenses that are not included in a new offense created by House Bill No. 141 and the illegal conduct is not distinguishable."

RESPONSE:

Rep. Miguel D. Wise, the author of HB 141, said: "I am disappointed that Gov. Perry would ignore the wishes of the Legislature in vetoing House Bill 141, an important piece of legislation which received both overwhelming and bipartisan unanimous support in both the House and Senate before reaching his desk.

"The passage of this legislation would have meant added protections for victims of kidnappings and aggravated kidnappings in Texas, especially when it involves young, innocent children who many times fall prey to vicious acts of violence at the hands of criminals every year. This legislation was merely intended to strengthen current Texas law in the Penal Code pertaining to the prosecution of and punishment for the offenses of kidnapping and aggravated kidnapping, particularly when children under 17 are involved. It was intended to strengthen current law by increasing the level of the felony from third degree to second degree if the person abducted is exposed to a risk of serious bodily injury.

"Contrary to what the governor stated in his justification to veto, current Texas law does not address this matter adequately. Current law is so weak that it does not elaborate on the risk factor of 'bodily injury' at all. Furthermore, the issue is covered in current law so vaguely that it is difficult to prosecute criminals who commit such horrific crimes in Texas. The new language in this legislation would have strengthened the Penal Code by

making it an offense if the abductor held the person abducted in a ‘condition of involuntary servitude.’

“Finally, it would have strengthened current law by also making it an offense if the person abducted is a minor younger than 17 years of age or is incompetent. The bottom line is that HB 141 was basically intended to serve as a ‘cleanup’ measure to close some loopholes in current law and thus make it clear to criminals that kidnappings and other similar crimes committed against innocent victims involuntarily will not be tolerated in Texas, especially when children under 17 are involved.

“I cannot understand how Gov. Perry and his policy people would turn their heads and look the other way, especially when it comes to proposing measures that would strengthen any current law in our Penal Code to protect all Texans, including children.”

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

NOTES: HB 141 was analyzed in Part Three of the May 9 *Daily Floor Report*.

Prohibiting death penalty for the mentally retarded

HB 236 by Hinojosa, et al. (Ellis)

DIGEST:

HB 236 would have prohibited a death sentence for any defendant found to be mentally retarded. If the defendant was found guilty of capital murder, the defendant during the sentencing phase could have requested the submission of a special issue for the jury to determine whether the defendant was mentally retarded. If the jury found the defendant mentally retarded, the court would have had to sentence the defendant to life imprisonment. Evidence of mental retardation currently can be considered as mitigating evidence in determining whether a life sentence should be imposed.

If a jury found that the defendant was *not* mentally retarded and sentenced the defendant to death, the defendant could have petitioned the court to appoint two disinterested experts to examine the defendant. If, after considering the experts' findings and those of experts offered by the prosecution, the court found the defendant to be mentally retarded, it would have had to sentence the defendant to life imprisonment. Appeals of the finding to the Court of Criminal Appeals would have had priority over other cases.

GOVERNOR'S REASON FOR VETO:

"I support legislation that improves Texas' criminal justice system, measures that make it fairer to defendants and that ensure justice is achieved — not just for defendants but victims as well. That is why I have signed legislation to provide for genetic testing in cases where it can resolve a question of guilt or innocence and legislation that established for the first time statewide standards for the appointment of defense attorneys for indigent defendants facing a death sentence. Both of those laws, I believe, protects victims and defendants.

"To characterize House Bill No. 236 as a law to ban the execution of the mentally retarded is misleading. This legislation is not about whether to execute mentally retarded murderers. We do not execute mentally retarded murderers today. It is about who determines whether a defendant is mentally retarded in the Texas justice system.

"Texas' criminal justice system already has numerous safeguards to ensure that defendants who have subaverage intellectual capacity and who also have significant impairments in adaptive functioning — components of the

definition of mental retardation under Texas law — are not executed. Juries in Texas consider both these factors, as well as others, when issues of mental defects — whether they be mental illness, retardation or other deficits — are raised at trial. They are considered in separate pretrial competency hearings in front of a jury, in the guilt-innocence phase of the actual trial, and again in the sentencing phase of a trial.

"My opposition to this legislation focuses on a serious legal flaw in the bill. House Bill No. 236 would create a system whereby the jury and the judge are asked to make the same determination based on two different sets of facts. In addition to fundamentally undermining confidence in the jury system, the provisions could trigger innumerable retrials. Also of grave concern is the fact that the provision that sets up this legally flawed process never received a public hearing during the legislative process.

"House Bill No. 236 would take the Texas criminal justice system down an unprecedented and unwise course by undermining the jury system in capital murder trials. It would do so by giving judges the power to overturn a jury's determination of whether a murderer is mentally retarded. And it would do so only when a defendant or defense attorney disagrees with a jury's conclusion.

"A cornerstone of Texas criminal jurisprudence is the principle that a jury is the proper and final decision-maker about the facts in a trial. Even when a criminal case is appealed, the courts recognize that a jury's decision about the facts of a case is presumed correct."

RESPONSE:

Rep. Juan Hinojosa, author of HB 236, said he was "very disappointed" in Gov. Perry for vetoing this bill. He noted that Texas executes more people than all other states put together and that the vast majority of those executed are Hispanic or black. "On top of that we are now executing people who are mentally retarded. Shame, shame, shame, Mr. Governor." Rep. Hinojosa said the governor had "made a decision based on emotion and not public policy" and had "caved in to the pressures of the prosecutors."

Sen. Rodney Ellis, the Senate sponsor of the bill, also said he was "extremely disappointed." "In my view, it was a short-sighted decision that will only further stain Texas' image across the nation and the globe. Frankly, I'm embarrassed for Texas.

"After years of national and international criticism, the Texas Legislature stepped up to the plate and worked hard to repair some of the flaws in our criminal justice system. We passed a law allowing inmates access to DNA testing and a law to increase compensation for the wrongfully imprisoned; we outlawed racial profiling; overhauled our indigent criminal defense system, and finally passed the James Byrd, Jr. Hate Crimes Act. Unfortunately, Governor Perry's veto of the ban on the execution of the mentally retarded is what will be remembered, and Texas will continue to be viewed as bloodthirsty and callous.

"Contrary to the spin of others, this bill was not a backdoor attempt to ban the death penalty, and it would not have let criminals go unpunished. It would merely ensure that the ultimate punishment is reserved for those who deserve it most. Also, to claim that we have never executed the mentally retarded is just flat wrong. Texas has executed six offenders with mental retardation, the most recently last August. The protections that opponents of this legislation claim protect the mentally retarded merely lumps mental retardation in with a number of other factors. In my view, mental retardation should not be a mitigating factor, it should be the defining issue.

"This never should have been a fight. The simple fact is that seventeen state legislatures — and the U.S. Congress — have passed legislation to ban the execution of the mentally retarded. Two other states — California and North Carolina — are debating the issue. In each of those states, there was broad, bipartisan support and leadership from the top. Now, instead of showing leadership on a difficult and emotional issue, Texas stands alone as the only state to pass a plan and then have it vetoed. What a shame.

"Governor Perry had an historic opportunity to show the world that we are not only tough on crime, but fair and compassionate as well. He missed that opportunity. Texas could have taken a strong moral stand; instead, we must once again wait for the Supreme Court to force us do the right thing. I firmly believe that later this year the U.S. Supreme Court will do just that by outlawing the execution of the mentally retarded. If that happens, Texas will not only look bloodthirsty, but foolish."

NOTES:

HB 236 was analyzed in Part Two of the April 19 *Daily Floor Report*.

Equal access to public accommodations

HB 259 by G. Lewis, et al. (Armbrister)

DIGEST:

HB 259 would have prohibited owners or operators of businesses and other places of public accommodation (other than colleges and most schools) from restricting anyone's access, admission, or use because the person operated a motorcycle, belonged to a motorcycle organization, or wore clothing displaying the name of an organization or association, or because of the person's race, creed, sex, religion, or national origin. An owner or operator could have banned a person whose clothing did not conform to a clearly stated dress code already in effect and not designed to exclude any individual or group, or whose conduct posed a risk to the health or safety of other persons or property. Aggrieved individuals could have filed lawsuits for injunctive relief and/or actual and exemplary damages.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 259 would create a cause of action that is duplicative of federal law. In addition, establishing a legally protected class based merely on personal interests, or even attire, would invite virtually any discernable group of individuals to seek similar special legal protections under Texas law."

RESPONSE:

Rep. Glenn Lewis, the author of HB 259, said: "Texas has waited for almost 40 years to pass an antidiscrimination law in public accommodations similar to the one passed by the federal government. Thirty-two other states have since followed suit by enacting similar protections. When the great state of Texas finally enacts one with the passage of HB 259, it results in a gubernatorial veto. It is my opinion [that] Gov. Perry's veto of this measure denying Texas citizens the same protections is extremely unfortunate."

Sen. Ken Armbrister, the Senate sponsor, said: "This bill would have required equal access to a certain group that appears and dresses differently than others. It was brought to us by a part of grassroots Texas. If that group has a cause of action, it would not be because of the bill but because they are being treated differently than others."

NOTES:

HB 259 was analyzed in Part One of the April 25 *Daily Floor Report*.

Establishing the Charitable Health Care Trust Act

HB 393 by Maxey, et al. (Ellis)

DIGEST:

HB 393 would have required nonprofit hospitals that were converting to for-profit or mutual corporations or that were transferring assets to another nonprofit to dedicate their assets to charitable health-care purposes. The bill would have set forth duties for nonprofit health-care providers in the transfer, lease, exchange, conversion, restructuring, sale, or dissolution of assets. Application of the bill's standards would have depended on the type of agreement, whether previous agreements or transactions were involved, and the fair market value of the assets or gross revenues of the nonprofit. A nonprofit provider would have had to notify the attorney general in writing of its intent to enter into an agreement, disclose the conditions of and parties to the agreement, publish a notice of the transaction, solicit written comment and hold at least one public meeting, and notify the commissioners court in each county in the nonprofit's publication area. The attorney general could have imposed a civil penalty on an organization that failed to comply, not to exceed $10,000 for each day of a continuing violation.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 393 would require certain nonprofit health-care providers seeking to establish new business ventures to give published notice of their intent and to hold a public meeting seeking public comment. Community support and involvement with nonprofit health-care providers is an important consideration but must be balanced against the interests of the mission of the nonprofit entity. This bill does not adequately achieve that balance."

RESPONSE:

Rep. Glen Maxey, author of HB 393, said: "This bill was so simple. When a nonprofit hospital intends to close or change its mission, this bill would have required public notice and comment. The board of a nonprofit holds community interests — the assets obtained through donations or fund-raising efforts do not belong to the board, they belong to the community. This bill would not, as the governor said, compromise the mission of the nonprofit. The mission of the nonprofit entity is the health of the community. This bill would have created a balance between the interests of the nonprofit entity and the community.

"I have worked on this legislation for four sessions. This year we had debate on the House floor, and the bill went to conference committee. Everyone who would have been affected by the legislation had an opportunity to comment

and had signed off on the final version. I never heard one objection from the governor or his staff."

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

NOTES: HB 393 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Identification required for driver's license

HB 396 by Wise, et al. (Gallegos)

DIGEST:

HB 396 would have defined proof of identity necessary to receive a driver's license as:

- a driver's license or personal identification certificate issued by the Department of Public Safety (DPS), even if it is expired;
- a valid driver's license or valid identification document from another state that includes a photo of the person;
- a passport or identity card with a photo issued by another country, even if it is expired;
- a duplicate original birth certificate or certified copy of a birth certificate issued by Texas or another state or country if accompanied by required supporting documents; or
- any other proof that is satisfactory to DPS.

The bill would have created an exception to the current requirement in the Family Code that applicants for driver's licenses must provide their social security numbers. Instead, applications could have been accompanied by:

- social security numbers;
- a Social Security Administration (SSA) L-676 letter stating that the applicant was ineligible to obtain a social security number;
- a tax identification number issued by the U.S. Internal Revenue Service; or
- an affidavit sworn before a Texas notary public stating that the applicant had not been issued a social security number, SSA L-676 letter, or tax identification number.

GOVERNOR'S REASON FOR VETO:

"Existing Texas law and Texas Department of Public Safety rules already provide the means for foreign nationals who are in this country legally to obtain Texas driver's licenses or, as with Mexico, to drive legally using their foreign-issued driver's licenses."

RESPONSE:

Rep. Miguel Wise, author of HB 396, said: "I am disappointed that Gov. Perry would ignore the wishes of the Legislature in vetoing HB 396. This is an important piece of legislation which received both overwhelming and bipartisan support from both the House and the Senate. HB 396 would have given people who do not have a social security number alternate means to

apply for a driver's license in Texas. I worked hard to obtain bipartisan support for this measure. It is clear from the 110-18 vote in the House and 29-1 vote in the Senate that this measure is not a Democratic or Republican issue. Yet, it is obvious that Governor Perry ignored the wishes of the vast majority of Texas lawmakers and placed politics over policy....

"[A] driver's license is supposed to prove an individual's knowledge of motoring laws of Texas. It is not an application to establish citizenship, since that is the role undertaken by the federal government through the State Department. However, without a driver's license, an individual cannot purchase a vehicle, cannot register a vehicle, cannot obtain proper auto insurance, and cannot guarantee an individual's knowledge of public safety rules and regulations. This legislation was intended to remove an obstacle facing many Texas residents, who otherwise could become a major safety threat to our highways and the lives of the motoring public, if they are not properly and adequately licensed to drive in Texas. I firmly believe that passing this measure in Texas would have translated into a public safety and financial responsibility issue for Texas."

Sen. Mario Gallegos, the Senate sponsor, said Gov. Perry vetoed legislation that would have reinstated a 1997 law allowing the Texas Department of Public Safety to accept additional forms of identification from Texas residents interested in applying for a state driver's license.

"The way I see it, the Governor vetoed an opportunity to make Texas roads safer. The Governor's veto statement held that Texas law currently provides the means for foreign nationals in this country legally, to obtain a Texas driver's license. Had the Governor taken the time to visit with legislators or followed the floor debate, he would have heard that this was less a citizenship issue than a road safety issue. Objections to this bill that make reference to residence status fall outside the bounds of policy intent and only serve to politicize the issue. I just wish that somewhere along the way the Governor would have contacted me to let me know he had some concerns with this legislation."

NOTES: HB 396 was analyzed in Part Three of the May 3 *Daily Floor Report*.

Judicial training in ethnic, cultural, and racial awareness

HB 546 by Noriega, et al. (Gallegos)

DIGEST:

HB 546 would have required the Court of Criminal Appeals to adopt rules requiring training of judges in issues related to racial, cultural, and ethnic awareness, including training in the relevant sections of the Code of Judicial Conduct. The rules would have had to require each judge subject to the Rules of Judicial Education to complete the training within the judge's first four years of service and to complete additional training during later service.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 546 would require the Texas Court of Criminal Appeals to mandate continuing education programs for all state judges on issues related to racial, cultural, and ethnic awareness. While such training is well-intended, the Court already has the authority to establish continuing education requirements and, indeed, has incorporated training on cultural awareness as part of the judicial training programs it provides. Furthermore, the Texas Constitution generally leaves decisions on such issues to the judiciary and the voters, not the Legislature. I believe the proper resolution to any dissatisfaction with judges rests with the voters."

RESPONSE:

Rep. Rick Noriega, the author of HB 546, was not available for comment.

Sen. Mario Gallegos, the Senate sponsor, said: "HB 546, which passed both legislative chambers with bipartisan support, would have added cultural and ethnic sensitivity training to the judicial training curriculum. With the diverse population of Texas and the growing presence of varying cultures and ethnicities, the need for sensitivity training for our judges is becoming more acute....In his veto message, the governor communicated that this decision is one that should be left to the discretion of judges or the voters. Unfortunately, this sentiment was not communicated to either chamber of the Legislature that passed the bill without objection. By vetoing HB 546, the governor is sending a message of coarseness, not compassion, to the vibrant melting pot that makes this state such a wonderfully diverse place to call home."

NOTES:

HB 546 was analyzed in Part Two of the May 10 *Daily Floor Report.*

Including career and technology training in educational objectives

HB 660 by Seaman, et al. (Van de Putte)

DIGEST:

HB 660 would have allowed local school districts to develop a career and technology education curriculum, including programs in agricultural sciences, arts and communication, business education, health occupations, trade and industry, and family and consumer sciences. It would have created a nine-member state Career and Technology Education Advisory Board to help the Texas Education Agency develop a state plan for career and technology education. The bill would have established awards to recognize students for distinguished achievement in career and technology education, and the governor would have been encouraged to recognize by proclamation members of the business community who assisted in the development of local career and technology programs. A local school board could have contracted with a private entity to provide instruction and could have obtained liability insurance for such programs. The education commissioner would have had to determine how to count students who participated in these programs toward a school's weighted average daily attendance. Contingent on voter approval, school districts that exceeded the equalized wealth level could have reduced the district's wealth per student by agreeing to provide career and technology programs to other districts.

GOVERNOR'S REASON FOR VETO:

"HB 660 attempts to enact through legislation what should be accomplished through the implementation of existing statutes and policies regarding career and technical education. While the intent of the legislation is based on the goal of improving educational opportunities for children, House Bill No. 660 has the potential to cause schools to move away from rigorous academic programs in favor of career pathways and the use of measures such as portable skills credentials. Positive career programs based on core academics and high educational standards can be established under current law through local control of education decisions and with the full consent of the parents of students in these programs."

RESPONSE:

Rep. Gene Seaman, the author of HB 660, said: "The veto message states that the existing curriculum adequately addresses the need of career and technology education. However, we live in an era where highly skilled employees and technical knowledge are essential and valuable in meeting the demands of today's workplace and in seeking post-secondary training and education. Existing state programs fail to recognize the important role career and technology has on earnings potential and on retaining students who

might otherwise drop out of school. Texas needs to provide additional programs and alternatives for career skills enhancement training. HB 660 would have addressed only a small part of the problem: providing opportunity for those students not seeking a four-year degree with skills and training to become productive citizens in society. There are many high-wage, high-skilled jobs in Texas that go unfilled because the state does not provide adequate training of its workforce or the opportunity to retrain employees with new skills which aid those seeking jobs in today's changing workplace."

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

NOTES:

The HRO analysis of HB 660 appeared in Part Three of the May 3 *Daily Floor Report*.

In 1999, Gov. George W. Bush vetoed a similar bill, HB 1418 by Seaman.

Allowing parking across sidewalks next to private driveways

HB 674 by Elkins, et al. (Lindsay)

DIGEST:

HB 674 would have allowed municipal or county governing bodies to adopt ordinances or orders allowing operators to park, stop, or stand passenger cars or light trucks on portions of sidewalks extending across private driveways, if the driveways were not long enough to accommodate the vehicles without their extending across the sidewalks. Any conflicts between local ordinances or orders and the Transportation Code prohibition against such parking, stopping, or standing of vehicles would have been resolved in favor of the ordinances or orders.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 674 would permit counties or municipalities to adopt an ordinance allowing the operator of a car or light truck to park their vehicle on the portion of a sidewalk that extends over a private driveway. Current state law prohibits such action. I believe that current law should be maintained in order to ensure access and use of sidewalks throughout the state by persons with disabilities and others."

RESPONSE:

Rep. Gary Elkins, the author of HB 674, had no comment on the veto. Sen. Jon Lindsay, the Senate sponsor, was unavailable for comment.

NOTES:

HB 674 was analyzed in Part One of the May 4 *Daily Floor Report.*

Survival of a wrongful death suit upon death of the plaintiff

HB 947 by S. Turner (Duncan)

DIGEST:

HB 947 would have allowed the child of a surviving spouse in a wrongful death suit to be substituted as the plaintiff if the surviving spouse died while the case was pending. Substitution of plaintiffs in the pending suit would not have affected the child's right to recover damages in his or her own name. A child would have been defined as an heir of the body of the parent within the meaning of the Texas Constitution, Art. 16, sec. 26.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 947 would eliminate certain limitations on wrongful death actions. This bill is inconsistent with the traditional purposes of the Texas Wrongful Death Act."

RESPONSE:

Rep. Sylvester Turner, the author of HB 947, said, "The governor's veto was ill-advised. Obviously, either he or his staff did not understand the bill. It did not create a new cause of action. This bill was primarily crafted with senior citizens in mind. If a senior citizen was killed by the negligent act of a third party, and an elderly spouse brought a cause of action, then died four months later, this bill simply would allow their children to continue the cause of action. There was no opposition to the bill in the House or the Senate. No one testified against it. Even the tort reformers were not opposed. The governor never indicated that he had any opposition to the bill. What he did was wrong. When you put that type of unilateral power in the hands of someone who totally disrespects the process, it's dangerous. This veto was a poor sign of leadership."

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

NOTES:

The HRO analysis of HB 947 appeared in Part Two of the April 17 *Daily Floor Report.*

Consent for release of a deceased patient's medical records

HB 964 by Dunnam (Van de Putte)

DIGEST:

HB 964 would have authorized the family of a deceased patient to consent to the release of that person's medical records. Family members who could consent to release would have included the patient's surviving spouse, parent, sibling, or adult child or a person acting on behalf of a surviving minor child, including a managing conservator or an attorney representing the child. Under current law, only a personal representative of the patient may consent to release of a deceased patient's medical records.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 964 would expand the list of persons who may authorize the release of a decedent's medical records. The restrictions in current law appropriately protect the privacy interests of a decedent. This bill would allow numerous others to consent to the release of records without regard to the privacy interests and wishes of the decedent."

RESPONSE:

Rep. Jim Dunnam, the bill's author, said: "Neither the governor nor his office expressed any concern with HB 964 prior to the announcement of his veto. If he had cared to disclose his stated concerns prior to that time, he would have learned that HB 964 provides a needed tool for surviving children and spouses of deceased individuals to gain access to their medical files. Rather than protection of the deceased's privacy, the governor's veto protects those who committed medical malpractice on the deceased."

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

NOTES:

HB 964 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Study to review reimbursement methodology for nursing homes

HB 1001 by Naishtat, et al. (Zaffirini)

DIGEST:

HB 1001 would have directed the Health and Human Services Commission to evaluate the methodology used to set Medicaid reimbursement rates for nursing homes. The study would have had to evaluate specific factors, including costs of doing business that are not included in the reimbursement rate; ways of adjusting the rate to account for the rising costs of liability insurance; use of the reimbursement rate to encourage direct care staffing; and effectiveness of the flat-rate system in accounting for regional and facility-specific cost differences. It also would have evaluated the level-of-effort classification system to ensure accurate reflection of the level of need for patients with dementia, including Alzheimer's disease.

GOVERNOR'S REASON FOR VETO:

"The challenges facing the Texas nursing home industry require action, not study. Medicaid reimbursement rates for nursing facilities have been studied repeatedly over the past decade. The issues surrounding these rates are well known and do not need to be studied yet again, as House Bill No. 1001 would require."

RESPONSE:

Rep. Elliott Naishtat, the bill's author, said: "House Bill 1001, which had the support of the nursing home industry and every advocacy group, would have directed the state to evaluate the methodology used for funding nursing homes as well as inadequacies in the way we calculate the needs of our most fragile seniors: those suffering from Alzheimer's. Every interested party agreed that the methodology itself, not just the level of funding, contributes to the poor quality of care many nursing home residents receive."

Sen. Judith Zaffirini, the Senate sponsor, said: "The governor stated that 'the issues surrounding these rates are well known.' The issues certainly are well known, but they have not been resolved. HB 1001 would have provided the Legislature a firm foundation upon which to formulate policy that would ensure spending funds wisely to provide quality care to our most vulnerable citizens."

NOTES:

HB 1001 was analyzed in Part Two of the April 24 *Daily Floor Report*.

Setting guidelines for eligible work activities for TANF recipients

HB 1004 by Naishtat (Zaffirini)

DIGEST:

HB 1004 would have required the Texas Workforce Commission to adopt rules to determine the work or employment activities in which a recipient of Temporary Assistance for Needy Families (TANF) would have to participate to comply with TANF work requirements. In addition to the permissible work and employment activities allowed under federal regulations, Texas' rules would have included:

- attendance in an elementary, postsecondary, or technical school;
- attendance in an adult education or literacy program;
- participation in Volunteers in Service to America (VISTA);
- receipt of instruction in English as a second language; and
- activities designed to address and remove barriers to employment, such as counseling and other services relating to mental health, substance abuse, or family violence.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1004 would require the Texas Workforce Commission to adopt new rules on the types of work activities allowable under the TANF welfare-to-work program. This bill is unnecessary, as federal welfare laws and state rules provide adequate guidance on allowable TANF work activities. Federal lawmakers will debate TANF reauthorization next year and may significantly rewrite the program to give states more flexibility. This bill would limit the state's options. Texas should reserve the right to analyze any future federal options when they become available to determine whether they support our state's goals."

RESPONSE:

Rep. Elliott Naishtat, the bill's author, said: "House Bill 1004 would have clarified which activities are allowable in our welfare-to-work system and provided flexibility at the local level for program directors to develop services that meet the needs of low-income families as they strive to end their dependence on government assistance. Contrary to the governor's veto proclamation, in which he indicated that 'this bill would limit the state's options,' nothing in the legislation would have precluded Texas from responding to future federal options. In fact, as a result of this veto, local workforce development boards will have fewer options to assist low-income clients in becoming self-sufficient."

Sen. Judith Zaffirini, the Senate sponsor, said: “Gov. Perry’s veto of this bill is perplexing, particularly since an amendment he requested to provide for work or employment activities that are within the limits of federal regulations was added in committee. The bill then was passed on the [Senate’s] Local and Uncontested Calendar. The veto threatens the state’s ability to design its own policies to support self-reliance.”

NOTES: HB 1004 was analyzed in Part Two of the May 1 *Daily Floor Report.*

Creating exemptions from TANF work requirements

HB 1006 by Naishtat (Zaffirini)

DIGEST:

HB 1006 would have retained five of the 15 existing state exemptions from the mandatory work-participation requirements for recipients of Temporary Assistance for Needy Families (TANF). The state exemptions would have been for adults over age 60; caretakers of children or adults with a mental or physical disability; people who are permanently disabled or are incapacitated for longer than 180 days and cannot work, as confirmed by a physician's statement; pregnant women whose pregnancy makes them unable to work; and a caretaker of a child until the youngest child at the time of application turned one year old. These exemptions would have been in addition to the federal work-requirement exemption for single parents with children less than a year old and a temporary exemption for parents with children under age six who cannot find child care.

The Texas Department of Human Services could have established rules for good-cause noncompliance, which could have included temporary illness; incarceration; lack of transportation, child care, or other necessary support; an employment referral resulting in an offer of employment that would pay less than the minimum wage; a commute of more than two hours round-trip; and a family crisis. The rules also could have established a partial exemption for a caretaker of a child under age six, requiring such a recipient to work only 20 hours per week.

The Texas Workforce Commission and local workforce development boards would have had to develop plans to provide outreach services for people exempt from the work requirements, including support services, information, and referral. They also would have had to work with a person with a good-cause exemption to remedy the conditions that constituted good cause.

GOVERNOR'S REASON FOR VETO:

"Texas can better address the unique needs of welfare recipients and assist more families to become independent from public assistance without House Bill No. 1006. Both the Texas and federal welfare-to-work laws and initiatives emphasize the value of work for families striving to become independent of case assistance through the TANF program. TANF clients must be encouraged to take advantage of free services through their local workforce development boards that can help them find and keep jobs. House Bill No. 1006 would codify a significant number of long-term TANF work

exemptions. The goal of excusing from work requirements those people who truly cannot work can be best accomplished through flexible agency rules."

RESPONSE:

Rep. Elliott Naishtat, the bill's author, said: "House Bill 1006, which represented a year of research and collaboration with the speaker, lieutenant governor, and governor's offices, was intended to respond to welfare reform regulations at the federal level that limit the types of exemptions from work requirements. The governor's veto message is difficult to comprehend. Nothing in the bill discouraged clients from taking 'advantage of free services through their local workforce development boards that can help them find and keep jobs.' The legislation simply codified specific exemptions from work requirements, including good-cause exceptions such as temporary illness or incapacitation, lack of transportation or child care, and family crises that preclude participation."

Sen. Judith Zaffirini, the Senate sponsor, said: "The goal of HB 1006 was to tailor Texas' welfare-to-work policy to Texas, specifically by providing flexibility to local workforce boards. Gov. Perry's veto suggests that he prefers that state welfare-to-work policy be made in Washington rather than in Texas, even though the state is allowed flexibility to design its own policy."

NOTES:

HB 1006 was analyzed in Part Two of the April 30 *Daily Floor Report.*

Indemnity between electrical cooperatives and lignite miners

HB 1047 by Cook (Armbrister)

DIGEST:

HB 1047 would have allowed an indemnity agreement, which otherwise is prohibited by Civil Practice and Remedies Code, chapter 127, if the indemnitee was a nonprofit electric cooperative corporation and the indemnitor was a lessee or contractor who provided services or products related to lignite surface mining.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1047 would exempt an electric cooperative corporation from the prohibition on certain indemnity agreements. This bill would validate certain existing indemnity agreements that are presently illegal. I object to the application of this legislation to the extent it applies to existing contracts. I believe there are more appropriate venues for resolving contract disputes than the Texas Legislature."

RESPONSE:

Rep. Robby Cook, the author of HB 1047, said: "The governor's veto is frustrating since it is apparently based on the inaccurate assumption that the bill involved a contract dispute. As the testimony in both the House and Senate committees clearly showed, there was no contract dispute: both parties had agreed to the indemnification provision back in 1997. The legislation said nothing about a contract or specific contract provisions; rather, the new language simply gave the cooperative the right to secure indemnification, as it had done since 1997. Passage of HB 1047 would thus have enabled the existing negotiated agreement between the parties to remain in effect.

"The veto is also frustrating because it ignored the policy implications. The Legislature found that the situation in the oil patch that Chapter 127 was intended to correct did not exist here. The indemnification agreement in effect since 1997 was subject to negotiation and resulted from a freedom to contract. In this case, it is not a small contractor who is at the mercy of the major oil companies; rather, it is a large and sophisticated corporate mining contractor who, as one of several bidders for the job, exercised its freedom to negotiate and freely contracted with the cooperative to provide indemnification. Now, thanks to the veto, the corporate mining contractor does not have to live by the terms of that five-year-old contract."

Sen. Ken Armbrister, the Senate sponsor, said: “Historically, the San Miguel Electric Cooperative has provided power to other electric cooperatives. They correctly brought the problem with the indemnity agreement to the attention of the Legislature. The only objection to HB 1047 came from an out-of-state mining company. The governor sided with the out-of-state mining interest rather than with the state’s electric cooperatives, and I think he got bad advice on that.”

NOTES: HB 1047 was analyzed in Part Two of April 25 *Daily Floor Report.*

Creating legislative leave-time accounts for Dallas police officers

HB 1113 by Goolsby (West)

DIGEST:

HB 1113 would have required a city with at least 1 million residents that had not adopted Local Government Code, chapter 174, and to which Local Government Code, sec. 143.1261 did not apply — currently only Dallas — to create legislative leave-time accounts into which police officers could donate accumulated vacation or compensatory time to their chosen employee organizations. Members of these organizations could have used the donated hours for legislative leave, replacing the reimbursement that the employee organization ordinarily would have to pay the city when one of its members took time off work to appear before the Legislature. A police officer could have donated up to two hours each month to an organization's legislative leave-time account by submitting a written form authorizing the transfer.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1113 would require police departments in certain cities to allow police officers to contribute leave or compensatory time each month to a pool for other officers to use to lobby the legislature. Pooling of time for this purpose is inappropriate."

RESPONSE:

Rep. Tony Goolsby, author of HB 1113, said: "The governor's reasoning reflects an extremely poor understanding of this bill and law enforcement in Dallas County, as well as a lack of research by his staff. This leave time is the exact same as time donated to sick pools — it is vacation, overtime, and comp time that officers have already earned and for which they can be paid or can use themselves. This bill is especially important in Dallas County, where officers do not have 'meet and confer'/collective bargaining. Not to mention that the police chief would still have to approve the request for leave. The City of Dallas had no problems with this legislation and confirmed that it would not cost a single dollar to implement. I am especially troubled that neither the governor nor his staff ever contacted me during the process to express any concern."

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

NOTES:

HB 1113 was analyzed in Part Two of the April 19 *Daily Floor Report*.

Requiring statewide judicial candidates to file petitions

HB 1117 by Goodman (Harris)

DIGEST:

HB 1117 would have required a candidate for the Supreme Court or the Court of Criminal Appeals who chose to pay the filing fee to file a petition with the application as well. The petition would have had to contain at least 100 signatures from each of five state senatorial districts.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1117 would impose a new petition requirement only on candidates for the Texas Supreme Court and the Texas Court of Criminal Appeals. Ballot access requirements for all statewide candidates should be the same."

RESPONSE:

Rep. Toby Goodman, author of HB 1117, said: "The reason stated in the governor's veto message, in my opinion, is not a legitimate reason. The purpose of the bill was to ensure that we have qualified candidates running for the two highest courts in Texas, and not running on a catchy name at the last minute. We have had in the past unqualified candidates elected to the highest courts. This bill would have guaranteed that candidates had support from five senatorial districts and would have ensured that they were qualified candidates."

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

NOTES:

HB 1117 was analyzed in the April 10 *Daily Floor Report*.

Providing notice of wireless communications towers in rural areas

HB 1148 by Cook (Armbrister)

DIGEST:

HB 1148 would have required notification of proposed construction of a new wireless communication facility be filed with the county clerk 30 days before construction began. It also would have required the mailing of notices to public airports within three miles of the facility and to the Texas Department of Agriculture, which, in turn, would have had to notify the Boll Weevil Eradication Foundation. The tower owner would have had the option of mailing a letter to each landowner within two miles of the proposed location or publishing a notice in a newspaper of general circulation in the county.

HB 1148 also would have prohibited the location of a wireless communications facility "within three miles of the castor railroad crossing, located on the eastern side of a peak that is an oblong promontory with rimrock edges on the north and west sides that is 1,712 feet above sea level and that is in a county with a population of less than 5,500, whose county seat has a population of less than 2,500."

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1148 contains a legal prohibition against placing a cellular tower on a particular piece of property. This property is so narrowly defined as to only apply to a single individual and single parcel of land. Hence, this legislation appears to rise to the level of special legislation, which is prohibited by the Texas Constitution."

RESPONSE:

Rep. Robby Cook, the author of HB 1148, said: "The governor's veto of HB 1148, a landowners' rights bill, is frustrating since it is apparently based on an objection to a single provision of the bill. Current Texas law provides little authority for land-use regulations by counties and no specific authority for counties to regulate the placement of cellular telephone or wireless communication towers. The testimony in both the House and Senate committees clearly showed the support of the citizens of rural Texas. Passage of HB 1148 would have required cellular telephone and wireless communications companies to notify adjacent landowners before the construction of a communication tower.

"The veto is also frustrating because it ignored the work between property rights advocates and the cellular telephone industry. HB 1148 represented a negotiated compromise between rural residents and the wireless

communication companies and was supported by both groups. It would have allowed companies to be good neighbors to adjoining property owners by merely requiring notice to the county and neighboring landowners and would not have triggered a burdensome permitting process. Now, thanks to the veto, the cellular industry will continue the proliferation of cellular tower construction with no notification to landowners.

"The public safety aspect of HB 1148 is also an important element. Cellular towers pose a risk to agricultural aviators, who often fly below 200 feet to spray fields. Several agricultural pilots have died in crashes caused by striking an antenna structure or a guide line. The notification provision of HB 1148 would have allowed agriculture aviators to be better informed as to the location of these towers in rural areas."

Sen. Ken Armbrister, the Senate sponsor, said: "HB 1148 was vetoed because an amendment was unconstitutional. The governor was correct on this veto."

NOTES:

HB 1148 was analyzed in Part Two of April 25 *Daily Floor Report.*

Expunging records of defendants receiving deferred adjudication

HB 1415 by Farrar, et al. (Armbrister)

DIGEST:

HB 1415 would have exempted from public disclosure records of criminal defendants who received a discharge and dismissal after successfully completing the terms of deferred-adjudication community supervision. These records would have been unavailable to the public after the fifth anniversary of the discharge and dismissal of community supervision for a misdemeanor charge and after the 10th anniversary of the discharge and dismissal of community supervision for a felony charge. The bill would not have provided the exemption for anyone required by law to register as a sex offender, and the information would have been available to law enforcement agencies in subsequent criminal proceedings.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1415 would exempt from disclosure under the Public Information Act the criminal records of some offenders who receive deferred adjudication and successfully complete their probationary period. These records would be automatically sealed from public access five to ten years after the completion of the probationary period, depending on the severity of the crime. The Public Information Act is an important tool in the checks and balances on government, and restrictions on citizens' access to government records should not be made lightly. The closure of criminal records is particularly worrisome because it may jeopardize public safety."

RESPONSE:

Rep. Jessica Farrar, author of HB 1415, said: "The governor's veto is extremely unfortunate. This bill would have afforded mostly first-time criminals arrested on minor charges to have a deferred-adjudication arrest removed from their arrest record. It is imperative to note that the arrest would have remained entirely usable by the many agencies who have access to the closed records of the Department of Public Safety; the arrest would have only been removed from the defendant's open arrest record. While this may seem entirely small and unimportant, many people are denied employment simply because of a deferred-adjudication arrest on their criminal record.

"My office heard from Texans all over the state that say that this bill would have helped them to move on with their lives. Rather than preserving justice, we have now alienated an important segment of society: those otherwise good citizens who must continue to pay for a small mistake they made many years ago. We should be able to trust the judges who send down the ruling of

deferred adjudication; they have done so because they feel that the defendants in question do not require more intense rehabilitation. Defendants who accept a deferred-adjudication ruling do so with the understanding that their plea will not affect their permanent record, but in fact, it does.

"As a state, we should be able to deliver on our promises. It is ignorant and even dangerous to continue to prohibit these minor offenders from becoming completely positive members of society and obtaining their desired jobs, simply because of a deferred adjudication on their open criminal record.

"An even more fundamental result of the governor's veto is the Legislature's indignation. There were many amendments made to this bill in the House and in the Senate to make it more acceptable to all parties. The compromises were arrived upon through much work and serious negotiation. In the end, the House Criminal Jurisprudence Committee, the full House, the Senate Criminal Justice Committee, and the full Senate passed HB 1415 in almost complete unanimity. It is disappointing, to say the least, that the governor would choose to kill such a hard-earned bill."

Sen. Ken Armbrister, the Senate sponsor, said: "This bill was intended to protect kids who were not thinking and were caught shoplifting, being a minor in possession of alcohol, or other minor misdemeanors. HB 1415 would have cleared the record of those receiving deferred adjudication who had not gotten into any more trouble. The courts would have been able to expunge the records."

NOTES:

HB 1415 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Security costs required to challenge application for beer license

HB 1506 by Yarbrough (Whitmire)

DIGEST:

HB 1506 would have exempted elected officers of the state or federal government from the security requirement in Alcoholic Beverage Code, sec. 61.39, which allows anyone to contest an application for a beer license if the person gives security for all potential costs if the case should be decided in the applicant's favor. The statute currently exempts an officer of a county or incorporated city or town from the security requirement.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1506 would exempt state and federal officials from requirements related to posting security bonds for contesting beer license applications. City and county officials are currently exempt from posting such bonds, as they are best able to represent their constituents in these local disputes. No such exemption for state and federal officials is warranted."

RESPONSE:

Rep. Ken Yarbrough, the author of HB 1506, said: " HB 1506 would have continued a practice that allowed federal and state elected officials to represent their constituents without posting a bond to protest a liquor license. This legislation was brought to my attention as a result of the State of Texas Appeals Court ruling that the law only exempted city and county officials and not other elected officials.

"The veto of HB 1506 removes state representatives, senators, and federal officials from effectively representing their constituents and local civic associations who do not have the ability to post bond for contested case hearings. The Alcoholic Beverage Commission is a state agency subject to legislative oversight, and we routinely pass laws which affect the sale and use of alcohol. We as a Legislature should not have to post bond to request a hearing in these matters when representing our constituency."

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

NOTES:

HB 1506 was analyzed in the March 21 *Daily Floor Report*.

Operation of established commercial enterprises in residential areas

HB 1514 by Junell, et al. (Harris)

DIGEST:

HB 1514 would have specified that a commercial enterprise located in an area that was not used primarily for residential purposes at the time it was established and that had not changed its mode of operation substantially would not have to change its mode of operation or change the use of its mode of operation for any publicly known planned expansion. The bill would have applied to a mainly nonresidential area within one-half-mile of a commercial enterprise in a city of more than 100,000, or within one mile of an enterprise in a city of 100,000 or less or in the unincorporated part of a county. The bill would not have restricted, prevented, or preempted the enforcement of any applicable city, county, state, or federal law. It would have applied to any commercial enterprise, no matter when established.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1514 fails to recognize the unprecedented population growth our state has experienced and circumvents public nuisance laws that afford remedies for conflicts between commercial establishments that emit offensive odors or noises and neighboring residential properties."

RESPONSE:

Neither Rep. Rob Junell, the author of HB 1514, nor Sen. Chris Harris, the Senate sponsor, had a comment on the veto.

NOTES:

HB 1514 was analyzed in Part One of the April 17 *Daily Floor Report.*

Recovery of damages for a person who pays an injured child's medical bills

HB 1515 by Janek (Bernsen)

DIGEST:

HB 1515 would have permitted a child's parent, managing conservator, or guardian (collectively, "the parent") who was responsible for paying the child's medical expenses to join a suit brought by the child after the child reached age 18 to recover those expenses, whether or not the statute of limitations for the parent's own suit had expired. The parent could have joined the suit if the child was under 18 at the time the cause of action accrued. The parent could have recovered in the parent's own name even if the statute of limitations on the parent's own cause of action had expired, unless the parent had recovered damages for those expenses in a previous suit. The provision would have applied to actions commenced on or after the bill's effective date as well as to pending actions in which the trial or any new trial or retrial following motion, appeal, or otherwise, began on or after that date.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1515 would create an exception to current statutes of limitation in personal injury actions. The rationale for tolling the statute of limitations for minor children until they become adults does not apply to their parents, who are legally capable of asserting their claims within the prescribed period. Moreover, this bill would have the effect of unconstitutionally reviving actions that already are barred by statutes of limitation."

RESPONSE:

Rep. Kyle Janek, the author of HB 1515, said: "The purpose of HB 1515 was to clarify a problem in existing law regarding the rights of parents to bring suit when their child is injured. However, a floor amendment inserted in the bill created a problem in that it made the bill retroactive to past cases. The Governor's Office was correct in pointing this out, and based on that, I believe the veto was warranted."

Sen. David Bernsen, the Senate sponsor, had no comment on the veto.

NOTES:

HB 1515 was analyzed in the April 2 *Daily Floor Report.*

Allowing credit after parole revocation for time spent on parole

HB 1585 by Gallego, et al. (Staples)

DIGEST:

HB 1585 would have allowed some offenders who had their parole revoked to be given credit toward their sentences for the time they spent on parole. The bill would not have applied to offenders convicted of specific serious or violent crimes listed in Government Code, sec. 508.149. Other offenders whose parole was revoked would have been divided into two groups. Offenders in one group would have remained subject to current law that requires them to serve the remainder of their sentence if their parole is revoked. Offenders in the other group could have received credit toward their sentences for some of their time on parole.

HB 1649 by Gallego (Staples), signed by the governor and effective September 1, 2001, changes some functions of the Board of Pardons and Paroles and allows some inmates who have had their parole revoked to receive credit toward their sentences for time they spent on parole.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1585 allows the restoration of good-time credits to felons who are returned to prison after their parole or mandatory supervision is revoked, shortening the length of time they would have to serve before becoming eligible for parole again. Forfeiture of good-time credits is an appropriate sanction for those who return to prison for violating the rules of their release. Providing the Board of Pardons and Paroles the discretion concerning time credits is appropriate to the decisions made by the Board and is covered in House Bill No. 1649, which I signed."

RESPONSE:

Rep. Pete Gallego, the author of HB 1585, said: "The language in the bill would have been permissive; it would have allowed the [parole] division the discretion to do this. If Texas is serious about resolving the prison population problem, we need to take these types of measures into account to ameliorate the overburdened prison population."

Sen. Todd Staples, the Senate sponsor, said: "The main provisions in HB 1585 were also included in HB 1649, which the governor signed into law."

NOTES:

Both HB 1585 and HB 1649 were analyzed in Part Three of the May 4 *Daily Floor Report*.

Regulating certain vehicle rebuilding and salvage vehicle purchasing

HB 1678 by Bosse (Cain)

DIGEST:

HB 1678 would have prohibited the rebuilding and retitling of vehicles that had been issued "non-repairable salvage" certificates of title. Out-of-state buyers of non-repairable salvage or salvage vehicles would have had to obtain licenses annually from the Texas Department of Transportation for $200. Insurance companies and resellers could have sold late-model vehicles (six years old or newer) to out-of-state buyers only if they held valid licenses. However, the bill would have allowed salvage dealers to sell late-model salvage vehicles to individuals. So-called "casual sales" at auctions would have been limited to one non-repairable salvage or salvage vehicle per person per year.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1678 would create barriers to interstate commerce and create artificial market protections for Texas salvage dealers. The bill would create a new license for some companies that would cost twice as much as the license for others. This bill would also limit consumers' ability to purchase salvage vehicles from the dealer of their choice."

RESPONSE:

Rep. Fred Bosse, the bill's author, said: "House Bill 1678 would have closed a loophole in the vehicle salvage licensing laws passed in 1995 to curtail auto theft and 'chop-shop' operations and provide protection to consumers by removing from commerce vehicles which cannot be safely repaired."

Sen. David Cain, the Senate sponsor, was unavailable for comment.

NOTES:

HB 1678 was analyzed in Part One of the April 18 *Daily Floor Report*.

Off-duty security work scheduling coordination by sheriffs and constables

HB 1680 by Bosse, et al. (Whitmire)

DIGEST:

Current law allows full-time city police and state peace officers to act as "extra job coordinators" during work hours to schedule other officers for off-duty security work without being licensed by the state under the Private Security Agencies Act. HB 1680 would have allowed peace officers working for any political subdivision of the state to act as extra job coordinators.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1680 would give a wide range of political subdivisions the authority to allow an employee to coordinate supplemental, off-duty jobs for fellow employees. The policy of using tax dollars to pay the salary of an individual whose primary responsibility is to arrange off-duty employment is troublesome."

RESPONSE:

Rep. Fred Bosse, the bill's author, said: "House Bill 1680 would have corrected an oversight in House Bill 2617, 76th Legislature, the sunset bill for the Texas Commission on Private Security, by assuring sheriff's and constable's departments the same ability as municipal police departments to obtain, coordinate, and regulate extra security work for their peace officers. The Legislative Budget Board anticipated that this bill would have no fiscal impact on local governments. Any concern to the contrary might have been resolved by an inquiry to either the LBB or the sponsor during the four months between when the bill was filed and when it was vetoed."

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

NOTES:

HB 1680 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in the *Daily Floor Report*. Language identical to that in HB 1680 was included in SB 1224 by Harris, which the governor also vetoed.

Taxing authority for rural county employment development programs

HB 1723 by Seaman, et al. (Armbrister)

DIGEST:

HB 1723 would have authorized counties with populations of 50,000 or less to impose a sales and use tax of one-eighth of 1 percent or to designate up to 3 cents per $100 valuation of local property taxes to create a county workforce development board. County commissioners could have appointed boards with nine, 11, 13, or 15 members to establish and operate career and technology education and economic development programs.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1723 is unnecessary and redundant, allowing most Texas counties to create new workforce development boards, which would duplicate the job training and other functions currently administered through the state's 28 local workforce development boards."

RESPONSE:

Rep. Gene Seaman, the author of HB 1723, said: "The bill was not redundant of services provided by local workforce boards because the local boards tend to offer their services only in metropolitan areas and do not provide adequate services in rural areas of Texas.

"The intent of House Bill 1723 would be to provide a mechanism for local elements of rural governments, businesses, higher and public education, economic development, and workforce training to work together in meeting the specific workforce needs of rural counties. A similar bill, Senate Bill 607, was designed to be implemented by cities not rural counties. However, the Governor signed Senate Bill 607 into law even though it offers *significantly* more services than House Bill 1723 that could be interpreted as 'redundant and unnecessary.' The veto also is contrary to the concept of 'local control' since this bill was permissive and funding mechanisms had to be approved either through an election or passed by a resolution of the county commissioners. Services can never be considered 'unnecessary and redundant' if they are not provided in the first place by local workforce boards that are mandated to do so."

Sen. Ken Armbrister, the Senate sponsor, said: "HB 1723 would have affected only counties with populations of less than 50,000. Someone did not read the bill. This was a vote to help rural Texas."

NOTES:

HB 1723 was analyzed in Part Two of the April 4 *Daily Floor Report.*

Prompt payment of physicians by health maintenance organizations

HB 1862 by Eiland, et al. (Van de Putte)

DIGEST:

HB 1862 would have amended requirements for payment of health-care providers by insurers, including activities leading up to the submission of a claim, the receipt and payment of a claim, and activities following payment.

A claim would have been presumed received within three days of the date sent if the provider sent the claim by first-class mail and included a mail log, or presumed received if the provider received a confirmation from either the insurer's or the provider's clearinghouse for an electronic submission. A provider would have had to submit a "clean" claim — one submitted on the federal Medicare claim forms without requiring additional data, unless required in an electronic transaction to comply with federal law — within 95 days or forfeit payment.

An insurer could not have required a provider to use binding arbitration for prompt-payment disputes but could have used dispute-resolution procedures with the provider's consent. Insurers' requests for attachments would have been limited to a single request within 30 days after the claim was received and to clinical information.

Insurers, rather than providers, would have been responsible for coordinating payments. The bill would have created penalties in the amount of billed charges plus 15 percent interest for late payment by insurers and would have restricted the deduction of overpayments from future payments.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1862 would erode the ability of a health plan to agree, through contract or otherwise, to settle contract disputes through alternative dispute resolution or binding arbitration. By eliminating the ability to include an alternative dispute resolution clause, this bill is likely to send more disputes to the courthouse for resolution, further delaying the payment of claims, driving up the cost of health insurance premiums, and increasing the number of uninsured Texans.

"During the 76th Legislature, the Legislature enacted measures requiring the prompt payment of physicians and health-care providers by health plans, and created an unprecedented process enabling physicians to jointly negotiate with health plans. Final rules implementing these measures have only

recently been adopted and deserve greater opportunity to achieve their intended results....

"To ensure compliance with our prompt-pay laws, I am directing the Texas Department of Insurance to be more aggressive in assisting physicians and health-care providers in claims disputes. The department will quickly reopen and strengthen existing prompt-pay rules. Additionally, the department will continue its ombudsman program and seek feedback from health plans, physicians, and health-care providers about additional measures that can be taken to expedite claims payment by health plans. The department will present a report on these efforts in addition to recommendations for necessary action prior to the beginning of the next session."

RESPONSE:

Rep. Craig Eiland, author of HB 1862, said: "It would have been nice for the governor to have let somebody know that there was a veto-able objection at some point during the two and a half months of testimony and negotiation on the bill. His office was advised the entire time and never offered an objection or negative comment. Just as I did with the nursing home bill when he raised a veto-able objection, I removed that provision and would have done the same with the arbitration issue on this bill if I had known it was a concern. The rest of the provisions in this bill were too important. The commissioner will not be able to solve all of the problems addressed by this bill because he does not have the legal authority to do so. Delay of payment and other activities by HMOs that the bill addressed are not against current law. Therefore, the commissioner does not have the authority to intervene. I am sure, however, that he will do his best."

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

NOTES:

HB 1862 was analyzed in Part One of the April 24 *Daily Floor Report.*

Regulating the termination of provider contracts by an insurer

HB 1913 by Capelo (Shapleigh)

DIGEST:

HB 1913 would have required an insurer to conduct a peer review before filing a complaint if a contributing cause to the decision to terminate a health-care provider were based on utilization review, quality review, or an action reported to the National Practitioner Data Bank. If the review panel's recommendation were contrary to the insurer's determination, the insurer could have terminated the provider only for good cause.

In cases of imminent harm to a patient's health or when an action by a state medical or other physician licensing board or other government agency effectively impaired a provider's ability to practice medicine, or in cases of fraud or malfeasance, the insurer could have suspended the provider immediately if the provider's admission privileges had been revoked or suspended for longer than 30 days because of quality-of care-issues, or if the provider were subject to an order of the Texas State Board of Medical Examiners that revoked, suspended, or restricted the physician's or provider's license, if the peer review process was initiated simultaneously with the termination or suspension.

GOVERNOR'S REASON FOR VETO:

"HB 1913 would improperly preclude a preferred provider organization or health maintenance organization from immediately suspending or terminating the contract of a provider in cases of fraud or malfeasance or where the provider has been the subject of an action by a state licensing board that limits the provider's ability to practice."

RESPONSE:

Rep. Jaime Capelo, the author of HB 1913, said: "Once again, the citizens of the state of Texas who are patients of HMO and PPO plans and who have created relationships with their doctors are left without any protection when HMOs and PPOs unilaterally decide to remove doctors from their insurance plans. When doctors have no right to due process and no mechanism for appeal, the people who are hurt the most are the patients. Instead of moving in the direction of more choice, we are moving away from the right of citizens to choose who is going to deliver their health care. Obviously, I am disappointed, not only by the governor's veto of HB 1913, but also by the fact that we were not given the opportunity to work out his concerns regarding this legislation."

Sen. Eliot Shapleigh, the Senate sponsor, said: “HB 1913 would have provided additional due process to doctors who were dismissed without cause from an HMO or PPO. Gov. Perry’s veto shows a clear pattern that benefits HMOs at the expense of patients and providers.”

NOTES: The HRO analysis of HB 1913 appeared in Part Three of the May 4 *Daily Floor Report.*

Raising the permissible documentary fee on auto loans

HB 1994 by Marchant (Carona)

DIGEST:

HB 1994 would have allowed retail sellers to increase from $50 to $75 the documentary fee they may charge for performing the paperwork involved in buying and transferring the titles of motor vehicles and other titled vehicles purchased through installment loans. The bill also would have modified the notice that sellers must provide buyers reflecting the increase.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 1994 increases the permissible documentation fee from the current rate of $50 to $75. Documentation fees are not required by law. Rather, they are optional fees that may be charged to buyers to cover paperwork costs and other costs associated with closing a sale. The $75 fee represents a 50 percent increase, a rate that I believe far exceeds any cost hikes automobile dealerships have faced in providing such services."

RESPONSE:

Neither Rep. Ken Marchant, the author of HB 1994, nor Sen. John Carona, the Senate sponsor, had a comment on the veto.

NOTES:

HB 1994 was analyzed in Part One of the April 19 *Daily Floor Report*.

Abolishing the Office of Court Administration

HB 2111 by Gallego (Duncan)

DIGEST:

HB 2111 would have abolished the Office of Court Administration (OCA) on September 1, 2001, and transferred its powers, duties, functions, programs, funds, obligations, property, and records to the Texas Judicial Council (TJC). The Judicial Committee on Information Technology would have come under the direction and supervision of the TJC, which would have become the central agency responsible for efficient and uniform administration of the Texas judiciary.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2111 would place the primary administrative, budgeting, and management functions of the judicial branch under the control of legislative branch officials, violating the principle of separation of powers in the Texas Constitution."

RESPONSE:

Rep. Pete Gallego, the author of HB 2111, said: "The bill would not have run afoul of any constitutional stricture. The TJC would have been restructured in a way that would have been more effective, such as the Texas Legislative Council. The inefficiency of the poorly structured organization as it exists now would have been improved with this bill. HB 2111 went through the House and the Senate with minor changes and was subject to the legislative process with full consideration."

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

NOTES:

HB 2111 was analyzed in the April 30 *Daily Floor Report.*

Authorization and regulation of progressive bingo games

HB 2119 by Haggerty (Madla)

DIGEST:

HB 2119 would have allowed licensed authorized organizations to conduct progressive bingo games, but only one game per occasion. Neither the $750 limit that could be awarded for a single game nor the $2,500 aggregate prize limit would have applied to a progressive bingo game. Prizes could not have increased by more than $500 for each successive round played until the game was won. If no prize was awarded at a bingo occasion, the progressive bingo game would have had to continue at future occasions of the same organization until a winner was declared.

A licensed authorized organization conducting a progressive bingo game would have had to post rules before the start of a game that remained in effect for the duration of the game and maintain adequate records of prizes and gross receipts as required by the Lottery Commission.

Prizes awarded in a progressive bingo game, including consolation prizes, would have been subject to a prize fee, and local share provisions would have applied to the fee.

GOVERNOR'S REASON FOR VETO:

“House Bill No. 2119 would have authorized progressive bingo. This is a significant departure from existing legal charitable bingo games and, with its increased jackpots, could be seen as an invitation to expand gambling, which I oppose.”

RESPONSE:

Neither Rep. Pat Haggerty, the author of HB 2119, nor the sponsor, Sen. Frank Madla, had a comment on the veto.

NOTES:

HB 2119 was analyzed in Part One of the May 4 *Daily Floor Report*.

Excluding debt cancellation agreements from the definition of insurance

HB 2139 by Marchant (Carona)

DIGEST:

HB 2139 would have allowed retail installment contracts for motor vehicle sales to include charges for debt cancellation agreements not subject to state insurance regulations. Such agreements cancel the portions of outstanding loan amounts that exceed what a buyer's collision insurance would pay in the event that a vehicle was declared a total loss. In exchange for fees paid by buyers, sellers (or lenders) agree to accept any insurance claim settlements in lieu of unpaid debts. HB 2139 also would have allowed sellers to forgo amounts owed that were attributable to buyers' collision policy deductibles.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2139 would allow auto dealers to include the cost of a debt cancellation agreement in monthly payments on the purchase of a motor vehicle. Existing case law and Texas Department of Insurance rules have determined that debt cancellation agreements are tantamount to insurance policies. Under Texas law, insurance policies may be sold only by licensed insurance agents, and the policies — including the rates charged — are regulated by the state. The sale of insurance without appropriate regulation by the Texas Department of Insurance is inappropriate."

RESPONSE:

Neither Rep. Kenny Marchant, the author of HB 2139, nor Sen. John Carona, the Senate sponsor, had a comment on the veto.

NOTES:

HB 2139 was analyzed in the April 23 *Daily Floor Report*.

Child-care subsidies for low-income families

HB 2265 by Villarreal (Shapleigh)

DIGEST:

HB 2265 would have directed the Texas Workforce Commission to fund child-care subsidies for children living in households with incomes at or below 66 percent of the state's median income.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2265 would limit the ability of local workforce development boards to set income-eligibility standards for subsidized child care that are based on local needs. The Texas Workforce Commission already has the authority to change child-care program eligibility requirements by rule when situations warrant. This change could prevent some existing beneficiaries from receiving subsidized child care."

RESPONSE:

Rep. Michael Villarreal, the author, said: "HB 2265 would have required local workforce development boards to set income criteria for subsidized child care at no more than 66 percent of the state median income. Texas is currently one of the most generous states with regard to income guidelines for federally subsidized child care. The state allows local workforce development boards to set income criteria as high as 85 percent of the state median income, or about 246 percent of Federal Poverty Level. This generosity has created unintended problems.

"Child-care subsidies are intended to assist low-income families to leave the welfare rolls or to prevent them from having to apply for cash benefits altogether. When the state raised the income limits to 85 percent of state median income, however, thousands of middle-income families became eligible for a limited supply of subsidies. As a result, the waiting list for child care grew to nearly 31,000. Additionally, the federal government required states to prioritize families on welfare over those not receiving cash assistance. As the welfare rolls increase and more of these clients seek child-care subsidies, many local workforce development boards will need to make the difficult decision to terminate child-care subsidies for both low- and middle-income families.

"HB 2265 would have brought Texas more in line with the rest of the nation with regard to child-care dollars. By lowering the income criteria to 66 percent of state median income, the waiting list for child care would have decreased. Furthermore, local workforce development boards would have

been less likely to terminate child care to make way for welfare recipients. This is sensible public policy. In Gov. Perry's veto proclamation, he stated that HB 2265 would compromise local control. This is simply not true. Local boards would have retained the authority to set income limits below the maximum rate of 66 percent of state median income."

Sen. Eliot Shapleigh, the Senate sponsor, said: "Gov. Perry's veto maintains the current inefficient and unfair system, where areas with the highest numbers of children in poverty subsidize those with the least. Child-care formulas allocate based half on population and half on need. If an area does not have a significant number of children or families who meet the statewide poverty definition, then that money should be allocated to the neediest regions based on statewide poverty criteria, rather than altering the definition of poverty so the funds may be spent locally."

NOTES:

HB 2265 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Maximum work week and calculation of overtime for Dallas police

HB 2273 by Y. Davis (Cain)

DIGEST:

HB 2273 would have prohibited a city of more than 1 million residents that is not subject to Local Government Code, sec. 142.0017 and that has not adopted chapter 174 — currently only Dallas — from requiring a police officer to work more than 40 hours during a calendar week. Certain hours would have had to be counted toward hours worked in determining whether an officer had worked overtime in a particular week, including hours during which the officer had to remain on call for immediate duty and hours taken for authorized leave, such as sick time, vacation, compensatory time, or leave due to a death in the family.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2273 would undermine local control by specifically dictating in state statute the determination of the work week and overtime of police officers for the City of Dallas. Municipalities now have the authority to determine police officers' work weeks and overtime, and the state should not dictate how Dallas exercises that authority. This decision is properly left to the local officials in Dallas."

RESPONSE:

Neither Rep. Yvonne Davis, the author of HB 2273, nor Sen. David Cain, the Senate sponsor, was available for comment on the veto.

NOTES:

HB 2273 was analyzed in Part One of the May 1 *Daily Floor Report.*

Allowing hospitals to contract with physicians to provide indigent care

HB 2287 by Edwards (Moncrief)

DIGEST:

HB 2287 would have directed the Health and Human Services Commission to establish a method by which hospitals that serve a disproportionately high number of indigent patients could contract with physicians to provide care for those patients. This would have allowed the hospitals to share a portion of the additional reimbursement they receive as a "disproportionate share" hospital with the physicians who provide the care.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2287 would alter the purpose of the Medicaid Disproportionate Share Hospital program, which is to assist serving a disproportionate share of low-income and Medicaid patients, beyond its original intent to include services provided by a doctor."

RESPONSE:

Rep. Al Edwards, the author of HB 2287, said that he was disappointed and surprised by the governor's veto, as the bill would have facilitated payment for doctors.

Sen. Mike Moncrief, the Senate sponsor, had no comment on the veto.

NOTES:

HB 2287 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Resolving breach-of-contract claims against the state

HB 2312 by Bosse (Cain)

DIGEST:

HB 2312 would have specified that state law governing the resolution of contract claims should not be interpreted as limiting the Legislature's ability to grant contractors the right to sue state agencies on any terms the Legislature deems appropriate. Relevant state contracts would have had to include a provision requiring the parties to attempt settlement using the administrative dispute-resolution process outlined in Government Code, chapter 2260. That statute would not have applied to contracts not containing the dispute-resolution provision, nor to contracts awarded or signed on or before August 30, 1999. The bill also would have specified that the amounts or fair market value of orders for additional work could be included in amounts recoverable from the state for work actually performed.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2312 seeks to clarify that the Legislature retains the authority to waive sovereign immunity. House Bill No. 2312, however, contains a provision that nullifies the bill's good intentions and undermines the principle of sovereign immunity. The troublesome provision would waive Chapter 2260 of the Civil Practice and Remedies Code [*sic*] if a contract fails to include references to dispute resolution, thereby waiving, among other things, the limits on monetary damages against the state. Although the intent of this provision is to provide an incentive to ensure that contracts with the state include language on dispute resolution, state law already requires the inclusion of such language. Parties to a contract do not need an incentive to follow state law."

RESPONSE:

Rep. Fred Bosse, the bill's author, said: "The purpose of House Bill 2312 was to save time and legal expenses for persons with larger contract claims against the state by eliminating frivolous proceedings before the State Office of Administrative Hearings. While there is always room for legal minds to differ, the veto proclamation's concern that the bill could open the door to unlimited recoveries against the state seems difficult to justify. In the event of a waiver of Chapter 2260 remedies, the claim would have to proceed under Chapter 107, which sets forth recovery limitations and requires a resolution to sue the state containing any additional limitations that the Legislature deems appropriate."

Sen. David Cain, the Senate sponsor, was unavailable for comment.

NOTES:

HB 2312 was analyzed in Part One of the May 1 *Daily Floor Report.*

Regulating disposal of abandoned nuisance vehicles

HB 2313 by Bosse (Gallegos)

DIGEST:

HB 2313 would have eliminated the requirement that law enforcement agencies contact owners or lienholders of abandoned nuisance vehicles if vehicle storage facilities had notified the agencies that the facilities had applied, or would apply, to the Texas Department of Transportation or a law enforcement agency for permission to dispose of the vehicles. The bill would have defined abandoned nuisance vehicles as those at least 10 years old that were in a condition only so as to be demolished, dismantled, or wrecked.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2313 would allow salvage car dealers and others to dispose of vehicles deemed 'abandoned nuisance vehicles' without adequate prior notice to the owners of the vehicles."

RESPONSE:

Rep. Fred Bosse, the bill's author, said: "House Bill 2313 would have only applied to vehicles over 10 years old and of a condition to be demolished, wrecked, or dismantled. The only changes in notice from existing law would have been that the Texas Department of Transportation, rather than a local law enforcement agency, could have given the initial notice, and a vehicle storage facility would have the option to dispose of the vehicle under the Vehicle Storage Facility Act rather than the Property Code, actually necessitating more, rather than less, notice."

Sen. Mario Gallegos, the Senate sponsor, had no comment on the veto.

NOTES:

HB 2313 was analyzed in Part Three of the May 2 *Daily Floor Report.*

Assistance program for health-benefit plan consumers

HB 2430 by Naishtat, et al. (Carona)

DIGEST:

HB 2430 would have repealed the health maintenance organization consumer assistance program and created a similar program through the Office of Public Insurance Counsel. The program would have had to assist consumers with appeals of decisions made by their plans, provide information about available plans and rights and responsibilities of enrollees, establish a statewide toll-free telephone number and an interactive Internet web site for consumers, collect data on inquiries, problems, and grievances handled by the program, and report data periodically. These services would have had to supplement, not duplicate, services provided by existing and private programs or state agencies. An issuer of a health-benefit plan would have had to describe the program's services in its enrollment information materials. The program also could have included a statewide clearinghouse for consumer information about health-benefit plan coverage and could have accepted grants or donations. The program would have expired in 2005 if not continued under the Texas Sunset Act.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2430 was not sufficiently funded in the General Appropriations Act. The provisions of the bill can be achieved under existing law, should the Legislature choose to fund the program."

RESPONSE:

Rep. Elliott Naishtat, the author of HB 2430, said: "The governor stated that the ombudsman program 'was not sufficiently funded' and 'can be achieved under existing law.' Neither of these rationales makes sense. First, the Legislature rarely funds health and human services programs adequately. The $200,000 appropriated for the biennium, however, was sufficient to get the program started. In light of funding constraints this session, the Legislature authorized the ombudsman program to accept gifts, grants, and donations. Second, without statutory authority to establish the program, it simply could not be done."

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

NOTES:

The HRO analysis of HB 2430 appeared in Part One of the May 7 *Daily Floor Report.*

Requiring a study of the East Texas oil field

HB 2436 by Merritt (Brown)

DIGEST:

HB 2436 would have required the Bureau of Economic Geology of the University of Texas at Austin to study the East Texas oil field and recommend measures to maximize the ultimate recovery of oil and gas from the field. The bureau would have had to make a final report on or before September 1, 2003. If the Legislature did not appropriate money specifically for the bill's purpose, the bureau could have performed the study using other appropriations available for the purpose.

GOVERNOR'S REASON FOR VETO:

"The East Texas Oil Field has been studied numerous times, and private enterprise reviews data from this field constantly. Texans do not need another study of this type conducted at taxpayers' expense."

RESPONSE:

Rep. Tommy Merritt, the author of HB 2436, said: "I agree with the governor that the field has been studied. However, the type, nature, and impact of the proposed study are far different than any other study performed in the past. The field has never been studied by an unbiased resource with cutting-edge, state-of-the-art technology.

"The Bureau of Economic Geology (BEG) at the University of Texas estimates there is still more than 600 million barrels of oil left in the ground to recover. According to the proposal prepared by Dr. Scott Tinker, executive director of the BEG, recent studies of mature fields using advanced technologies, such as those utilized by the BEG, have achieved higher recovery rates. Former executive directors of the BEG, Dr. Noel Tyler and Dr. William Fisher, concur that the proposed study should be completed to recover additional oil and gas. The BEG is a world renowned leader in enhanced recovery studies and was chosen because the Railroad Commission lacks the manpower and funding to conduct such a study. The BEG performs studies of oil fields on state lands with positive results, and the comptroller has certified the expense as revenue-neutral due to the increased production. The comptroller certified HB 2436 as revenue-neutral.

"The BEG estimates the remaining mobile oil is valued at more than $15 billion, using a price of $25/barrel. The comptroller estimates the taxes and associated economic benefits to the Texas economy would bring the total value to more than $60 billion. If only a 5 percent incremental production of the remaining oil is recovered, the overall economic impact to the state is

more than $2.25 billion. The $2 million cost of the study is only 1 percent of the total production cost to recover the remaining oil.

"Furthermore, Texas will collect $750 million this biennium from severance taxes imposed on the oil and gas industry. The oil and gas industry is the only industry to pay this type of tax in the state. HB 2436 did not meet with objections from citizens or the oil and gas industry, as they recognized the investment of $2 million into a project that would yield results far exceeding the interest earned off the rainy day fund, thus providing jobs lost to foreign oil, boosting our economy, and funding public education.

"The impact to local school districts and Kilgore College District is significant, had this study been conducted. These entities have a declining tax base and cost the state in the last biennium close to $4 million in state aid to supplement the decline. The results of the study would have stabilized the tax base for these school districts, thus making available state funds for other deserving school districts.

"Finally, recovery of this oil goes hand in hand with President Bush's energy policy of discovering and producing more oil and our country becoming less dependent on unreliable foreign oil supplies. With an unstable Middle East, Texans must be prepared to have their oil and gasoline supplies cut off.

"The East Texas oil field, discovered in 1930, has produced more than 5.3 billion barrels of oil. This national treasure, once the largest field in the world, has provided the nation with oil in times of crisis such as World War II, the oil embargo in the 1970s, and the Gulf War. An enhanced recovery study utilizing today's technology will result in increased production from this national treasure for the benefit of school children, hard-working East Texans, the state, and the nation. I look forward to working with Gov. Perry, Lt. Gov. Ratliff, Speaker Laney, and the Railroad Commission on this critical issue during the interim and next session."

Sen. J.E. "Buster" Brown, the Senate sponsor, had no comment on the veto.

NOTES:

HB 2436 was analyzed in Part Two of the May 3 *Daily Floor Report*.

Regulation of parimutuel racing

HB 2484 by Wilson (Armbrister)

DIGEST:

HB 2484 would have made parimutuel wagering, entertainment, or amusement services or devices for racetrack patrons subject to the exclusive control of the Texas Racing Commission. The bill would have allowed medication and drug testing of race animals to be conducted by laboratories other than the Texas Veterinary Medical Diagnostic Laboratory. It would have outlined regulations for terminating seasonal workers, collecting their licenses, and providing lists to the commission of seasonal employees at live races. Effective January 1, 2002, the commission could have promulgated rules with regard to cross-species simulcasting, including the amounts and distribution of purses and administrative costs. Racetracks where wagers were made would have been responsible for reporting and remitting the state's share of the parimutuel pool. Wagering on simulcast races would have been restricted to one licensed location per race.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2484 would authorize the Texas Racing Commission to regulate certain amusement machines, which could include illegal gambling devices. Such regulation is outside of the intended scope of the Texas Racing Commission. Enforcement should remain with the Department of Public Safety, local prosecutors, and the Office of the Attorney General."

RESPONSE:

Rep. Ron Wilson, the author of HB 2484, had no comment on the veto.

Sen. Ken Armbrister, the Senate sponsor, said: "The veto message said that HB 2484 would let the Racing Commission regulate illegal gambling devices. If the devices are illegal, they will not be regulated ... Nothing in this bill would have legalized illegal gambling. If the governor's staff had a question about a bill, it was not that hard to find us. That did not happen."

NOTES:

HB 2484 was considered on the House Local, Consent, and Resolutions Calendar and was not analyzed by HRO in a *Daily Floor Report*.

Requiring valet parking services to maintain liability coverage

HB 2495 by Haggerty (Armbrister)

DIGEST:

HB 2495 would have required valet parking services to be financially responsible for each employee operating motor vehicles. Services would have had to carry vehicle or comprehensive general and garage insurance policies, file surety bonds, or deposit $450,000. The bill would have set minimum insurance coverage amounts, precluded certain defenses in civil lawsuits, and created a misdemeanor offense for vehicle operation by employees of services not providing financial responsibility.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2495 would impose a significant financial burden on valet parking services by requiring them to maintain financial responsibility for damages arising from their operations. Texans have a choice whether to use valet parking services and may do so at their own risk."

RESPONSE:

Rep. Pat Haggerty, the author of HB 2495, had no comment on the veto.

Sen. Ken Armbrister, the Senate sponsor, said: "This was not a good message for someone who no longer drives himself. The governor will no longer be dropping off his car with a valet parking service and have some kid run into a pole. HB 2495 would not increase insurance rates. Now you would have to sue the kid individually or sue the restaurant for damages to your car, or you would have to use your own insurance to cover the damage.

"HB 2495 was supported by the restaurant associations and the major valet services. It would reduce the problems caused by fly-by-night valet parking services. The Texas Department of Insurance said we needed to address the problem caused by vagaries of the law."

NOTES:

HB 2495 was analyzed in Part Two of the April 17 *Daily Floor Report*.

Fees set by the Texas State Board of Medical Examiners

HB 2558 by Maxey, et al. (Shapleigh)

DIGEST:

HB 2558 would have prohibited the Texas State Board of Medical Examiners (BME) from adjusting a fee established on or before August 31, 2001, to an amount less than the amount on that date. Under current law, fees set on or before September 1, 1993, are similarly frozen. The bill also would have repealed a provision of current law requiring the BME to raise fees by up to $20 for each year of fiscal 2000-01 and by up to $10 for each year of fiscal 2002-03 to cover the cost of developing profiles of licensed physicians and to reduce any fees raised within two years after the initial physician profiles were made public, to the extent that the fee increase was necessary to cover those costs.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2558 would continue the current licensing fees charged by the Texas State Board of Medical Examiners. The board, however, would be prohibited from spending the money on its intended purpose because the General Appropriations Act does not allow for such an expenditure."

RESPONSE:

Rep. Glen Maxey, the author of HB 2558, said: "We were raising the fee to fund certain projects at the State Board of Medical Examiners, including physician profiles and investigations. The rider to appropriate these funds was not included in the General Appropriations Act, so the additional funding the increased fees would have generated would not have gone to the board anyway. However, the $800,000 that this bill would have generated will not be there for general revenue purposes."

Sen. Eliot Shapleigh, the Senate sponsor, said: "Gov. Perry's veto of HB 2558 means that the Board of Medical Examiners will not be able to complete the physician profile program that was started last biennium. This means this profile, which includes information such as physician office locations, any disciplinary actions, specialties, and bilingual services, may not be available to help consumers choose their physicians."

NOTES:

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

Authorizing teams to review unexpected adult deaths

HB 2676 by Truitt (Madla)

DIGEST:

HB 2676 would have allowed counties with a population of at least 1 million to establish review teams to review domestic violence deaths and other unexpected deaths in the county. Such teams could have consisted of judicial and law enforcement officials, health-care providers, and domestic violence prevention advocates. The teams could have helped to coordinate agencies that respond to domestic violence deaths, recommended changes to prevent domestic violence deaths, and collected data.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 515, which I signed, provides a better framework than House Bill No. 2676 for the local review of adult fatalities, including those caused by domestic violence."

RESPONSE:

Rep. Vicki Truitt, the author of HB 2676, said: "HB 2676 and SB 515 were simultaneously introduced for the same purpose. The intent with both bills was to enable counties to establish Adult Fatality Review Boards to examine the circumstances surrounding unanticipated deaths in adults and collect statistics in an effort to identify and measure trends in domestic violence. The ultimate goal is reduce the occurrences of domestic violence in Texas.

"The primary difference between HB 2676, which was vetoed, and SB 515, which was signed into law, is that HB 2676 was written by House Legislative Council for the Family Code and bracketed to cover only the counties of Bexar and Tarrant. SB 515 was written by Senate Council and will become part of the Health and Safety Code. SB 515 is a permissive statewide bill, and I believe that having it in the Health and Safety Code is, indeed, more appropriate for its purpose. I carried both bills in the House, and I am satisfied with the outcome."

Sen. Frank Madla, the Senate sponsor, had no comment on the veto.

NOTES:

HB 2676 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

SB 515 by Madla (Truitt) authorizes a county to establish a review team to conduct reviews of unexpected deaths that occur in the county, including deaths found to be caused by suicide, family violence, or abuse. SB 515, which the governor signed June 17 and will take effect September 1, 2001, was analyzed in Part One of the May 17 *Daily Floor Report*.

Meet-and-confer authority for City of Houston employees

HB 2677 by Bailey, et al. (Whitmire)

DIGEST:

HB 2677 would have authorized the City of Houston to meet and confer with its employees to negotiate agreements on wages, benefits, and other policies affecting employees. An employee association could have been recognized as the sole and exclusive bargaining agent for all city employees if the association submitted a written petition signed by a majority of the covered employees. An association could have requested an election to determine the bargaining agent upon submission of a petition signed by 30 percent of the covered employees. An agreement reached by the employee bargaining agent and the city would have been binding if ratified by a majority vote of the city's governing body and a majority vote of the city employees in the association recognized as the employee bargaining agent.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2677 creates meet-and-confer authority for all City of Houston employees. The decision whether the City of Houston should meet and confer with a city employees' union should be left to the people of Houston and not the state."

RESPONSE:

Neither Rep. Kevin Bailey, the author of HB 2677, nor Sen. John Whitmire, the Senate sponsor, was available for comment.

NOTES:

HB 2677 was analyzed in Part Two of the April 30 *Daily Floor Report*.

Legislative leave-time accounts in Bexar and Tarrant counties

HB 2706 by A. Reyna (Madla)

DIGEST:

HB 2706 would have created legislative leave-time accounts into which peace officers or fire fighters in counties with a population of between 1 million and 1.5 million — currently only Bexar or Tarrant counties — could donate up to one hour per month of accumulated vacation or compensatory time to their chosen employee organizations. Members of these organizations could have used the donated hours for legislative leave, replacing the reimbursement that the employee organization ordinarily would have to pay to an employer when one of its members took time off work to appear before the Legislature.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2706 would require certain counties to allow peace officers and fire fighters to contribute sick leave, vacation, or compensatory time each month to a pool for others to use to lobby the Legislature. Pooling of time for this purpose is inappropriate. The use of sick leave, which is granted to employees in case of injury or illness, for lobbying activities is particularly troublesome."

RESPONSE:

Rep. Arthur Reyna, the author of HB 2706, said: "I am disappointed with the governor's decision to veto HB 2706. This legislation would have given peace officers and fire fighters the option of donating earned vacation, sick, and compensatory time to a legislative leave-time bank. The maximum contribution of one hour of leave per month is equal to only one hour's worth of wages in the same month. Use of a legislative leave bank is troublesome only for those who are not interested in hearing the concerns of their constituents."

Sen. Frank Madla, the Senate sponsor, had no comment on the veto.

NOTES:

HB 2706 passed the House on May 10 but was not analyzed in the *Daily Floor Report*.

Cause of action for bringing retaliatory SLAPP suits

HB 2723 by Raymond (Shapleigh)

DIGEST:

A strategic lawsuit against public participation, or SLAPP suit, is a suit brought against someone who makes a report or complaint to a governmental entity (complainant) by the person or corporation reported or complained of (complainee) because of the complaint or report. HB 2723 would have established a rebuttable presumption of the complainant's good faith and would have required a complainee to plead specific facts indicating that the complainant did not act in good faith. If the complainee failed to support the cause of action, the court would have had to issue a summary judgment in the complainant's favor. If the complaint were shown to be made in good faith, the complainee would have been liable for damages as well as attorney's fees and costs.

A complainee shown to have harassed the complainant in order to have the complaint dismissed; to prevent or limit the complainant from participating in an investigation of or proceedings regarding the complaint; to prevent the complainant from making the complaint; or to retaliate against the complainant, would have had to pay damages, attorney's fees, court costs, and exemplary damages of five times attorney's fees and costs.

A complainant also could have sued the complainee and his attorney(s) for bad faith. If the court or jury found that a complainee had acted in bad faith with a SLAPP suit, the complainant would have been entitled to judgment for actual damages, attorney's fees, court costs, and exemplary damages of five times the amount of attorney's fees and costs, for which both the complainee and the complainee's attorney(s) would have been jointly and severally liable. An attorney against whom a bad-faith judgment was entered would have been subject to professional discipline and to suspension or disbarment under the Government Code.

These provisions would not have applied to a complaint made confidential by law but that the complainant had disclosed to someone other than the governmental entity. Nor would it have applied where the complainant was or had been an employee of the complainee. The bill would not have created a cause of action against a governmental entity nor required the state to indemnify its agents.

GOVERNOR'S REASON FOR VETO:

"HB 2723 is a radical departure from traditional concepts of our adversarial justice system and the role of the courts. It also creates new causes of action by holding lawyers liable for the accuracy of information provided to them by their clients."

RESPONSE:

Rep. Richard Raymond, the bill's author, said: "HB 2723 would have protected citizens' rights to provide information to the government and the government's right to receive that information.... The bill was narrowly tailored to affect *only* communications made in official proceedings....Gov. Perry has made it clear that he sees nothing wrong with permitting those who violate the law to radically manipulate the legal system to punish those who report them by forcing them into costly, frivolous lawsuits.

"In response to the specious and unreasonable statements in his official proclamation, I believe that SLAPPs are a radical departure from the traditional concepts of civil litigation and serve as a bad-faith forum-shopping exercise for SLAPP plaintiffs. Citizens should be allowed to make good-faith communications to governmental entities without fear of retribution by the legal system....

"HB 2723 does not create a new cause of action against attorneys. They are currently subject to Rule 13 requirements in state courts and Rule 11 requirements in federal courts. A SLAPP plaintiff's lawyer would have knowledge he was suing on account of testimony or information provided in another official proceeding. The bill applies to suits alleging 'that the contents of or the filing of the complaint constitutes a basis for relief...' Even then, the sanctions against a lawyer [would] not [be] automatically applied but would be decided by a judge who must determine that the attorney acted in bad faith, and whose decision on the matter is appealable.

"Gov. Perry's real message to the public is that if citizens provide information to the government, or in official proceedings, we are subject to being sued in court for doing so. The veto, and the veto message mean:

- If you witness a crime and report it to the police, Gov. Perry has decided it is okay for those you report to sue you in court for doing so.
- If someone threatens to bring a gun to a school and shoot someone and you report this to the police or the school principal, Gov. Perry has decided it is okay for someone to sue you in court for reporting this.

- If you cooperate with a police or FBI investigation, Gov. Perry has decided it is okay for someone to sue you in court for doing so.
- If you oppose someone who presents a zoning request to a city council or city planning commission, Gov. Perry has decided you can be sued in court for doing so....
- Where police officers or sheriff's deputies are personally sued because they are witnesses to crime, the municipality or county employing them often pays for their legal representation. Gov. Perry's veto ended the opportunity to stop these unnecessary taxpayer expenses."

Sen. Eliot Shapleigh, the Senate sponsor, said: "The bill would have deterred frivolous, obstructionist retaliatory lawsuits meant to silence public reports of illegal activity. Similar bills have passed in 18 other states. Gov. Perry's veto sends the message that it is okay to sue someone in an effort to intimidate a witness and suppress the disclosure of information. If someone sees a crime in progress, for example, this bill would have encouraged disclosure by deterring a retaliatory lawsuit. Without the bill, such lawsuits will continue without restraint. The bill passed the Senate and the House with overwhelming bipartisan support, but not Perry's unelected staff."

NOTES: The HRO analysis of HB 2723 appeared in Part Three of the May 7 *Daily Floor Report.*

Coordinating youth programs through career development centers

HB 2786 by Noriega (Van de Putte)

DIGEST:

HB 2786 would have required the Texas Workforce Commission to coordinate implementation of the Texas National Guard's youth About Face programs through local workforce development boards. Career development centers established by the local boards would have had to implement the programs by acting as fiscal agents, determining eligibility and referring eligible individuals, and processing program reports.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2786 would require Texas' network of local workforce development boards to implement and administer the National Guard's youth mentoring program at each workforce center. This bill would impose an unfunded mandate on local workforce boards, as the budget does not provide for either program operations or administration. Each local board should be free to select youth mentoring programs that meet local needs and fit within local budgets."

RESPONSE:

Rep. Rick Noriega, the author of HB 2786, was unavailable for comment. Sen. Leticia Van de Putte, the Senate sponsor, had no comment.

NOTES:

HB 2786 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Demonstration project for federal-local medical assistance for adults

HB 2807 by Kitchen, et al. (Barrientos)

DIGEST:

HB 2807 would have directed the Health and Human Services Commission to establish a demonstration project to provide medical assistance to uninsured adults with incomes below 200 percent of the federal poverty level. The program would have been financed through local funds, and participating cities or counties would have received federal matching funds. The program could not have limited benefits for prescription drugs. At least one county in the project would have had to have a population of more than 725,000, or at least one city would have to have had a population of more than 600,000.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2807 would require a demonstration project to extend Medicaid coverage to certain low-income individuals to be developed and implemented concurrently with the anticipated reorganization of the Medicaid system. Additional duties, such as this demonstration project, would require the commission's supervision and labor. Over the next several months, the commission's primary focus must be on establishing sound and effective management of the Medicaid program."

RESPONSE:

Rep. Ann Kitchen, the author of HB 2807, said: "When Texans are facing a crisis in funding health care and the state has tremendous budgetary pressures, it is our responsibility to maximize every dollar we spend. This bill would have done that. Twenty other states receive federal matching funds. We need our share.

"I am surprised at Governor Perry's actions. The Governor never notified me of any difficulties with the bill before he vetoed it. The House unanimously passed the bill. It could have provided hundreds of millions of dollars to help local taxpayers with the costs of healthcare, including prescription drugs for our seniors.

"This veto will hurt my local community's efforts to fund health care as well as communities all across Texas. I urge Governor Perry to join me in trying to secure our share of federal matching funds for our communities, by urging the Health and Human Services Commission to take all necessary steps to obtain these funds."

Sen. Gonzalo Barrientos, the Senate sponsor, said: “I believe that HB 2807 could have improved services in Travis County and led to positive change for the state. Therefore, I am disappointed that this bill was vetoed.”

NOTES: HB 2807 was analyzed in Part Four of the May 4 *Daily Floor Report*.

Establishing legislative intent for nonsubstantive revisions of statutes

HB 2809 by Wolens (Cain)

DIGEST:

HB 2809 would have stated that the Texas Supreme Court's decision in *Fleming Foods of Texas, Inc. v. Rylander*, 6 S.W. 3d 27 (Tex. 1999) was inconsistent with the Legislature's "clear and repeatedly expressed intent" in enacting nonsubstantive changes in the Tax Code and other codes and that the absence of subsequent legislative action should not be construed as legislative acceptance of the court's decision.

In *Fleming*, the court held that an omission from a 1981 recodification of the Tax Code made a substantive change in the law regarding who may apply for a sales-tax refund. The court held that the codification must be given effect when specific, direct, and unambiguous code provisions cannot be reconciled with the prior statute. The court also ruled that general statements of the Legislature's intent that a recodification is nonsubstantive cannot revive repealed statutes or override the clear meaning of new, more specific statutes.

HB 2809 would have instructed courts or other entities interpreting state statutes to accept nonsubstantive codifications as having the same meaning as the statute before the codification. It also would have established that if there is no direct evidence of legislative intent to change the sense, meaning, or effect of the statute, the courts or other administrative agencies would treat the change as if were a typographical or similar error.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2809 would fundamentally alter the manner in which Texas courts interpret the written law of Texas. Besides implicating separation-of-powers concerns, this bill would tend to make it more difficult for ordinary Texans to ascertain the laws they are bound to obey."

RESPONSE:

Neither Rep. Steve Wolens, the author of HB 2809, nor Sen. David Cain, the Senate sponsor, were available for comment on the veto.

NOTES:

HB 2809 was analyzed in Part One of the May 1 *Daily Floor Report.*

Creating the Texas Energy Assistance Loan Program

HB 2839 by Dukes (Carona)

DIGEST:

HB 2839 would have required the General Services Commission (GSC) to implement the Texas Energy Assistance Loan Program. GSC's energy conservation office could have used money from the oil overcharge account to fund the program. The office would have had to develop and implement plans to deliver loans for the purchase of energy-efficient residential housing, making energy-efficiency improvements to existing housing, and making energy-efficiency improvements to agricultural equipment.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2839 would use the oil overcharge fund to establish the Texas Energy Assistance Loan Program. The oil overcharge fund was established to fund energy conservation programs for state agencies, higher education, public schools, and other units of local government. This legislation calls for an inappropriate use of the funds."

RESPONSE:

Rep. Dawnna Dukes, the author of HB 2839, said: "Foresight is a prerequisite for effective, innovative public policy, particularly on issues regarding the environment and staving off an energy crisis as experienced recently in California. Research indicates that inefficient energy practices in homes and apartments contribute to emissions by causing utilities to burn more fuels, thus increasing the release of greenhouse gases. The United States emits one-fifth of the world's total greenhouse gases, while Texas is the single largest contributor to the country's greenhouse gas emissions. HB 2839 would have given the state the opportunity to reduce the inefficient use of energy and proactively plan to prevent an energy crisis in Texas."

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

NOTES:

HB 2839 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Defining school officials to include legislative council employees

HB 2853 by Bosse (Cain)

DIGEST:

HB 2853 would have specified that Texas Legislative Council employees are considered state school officials for purposes of evaluating federally and state-supported education programs or for other appropriate purposes as authorized by federal law governing education records.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2853 would attempt to enable the Texas Legislative Council to gain access to personally identifiable information about Texas school children which is held by the Texas Education Agency. This type of information is made confidential by federal law. This legislation raises serious privacy concerns."

RESPONSE:

Rep. Fred Bosse, the author of HB 2853, had no comment on the veto. Sen. David Cain, the Senate sponsor, was unavailable for comment.

NOTES:

HB 2853 was analyzed in Part Two of the April 25 *Daily Floor Report*.

Authorizing private restaurant clubs to incorporate as permitted entities

HB 2878 by Goolsby (Carona)

DIGEST:

HB 2878 would have allowed incorporation of private clubs originally formed as associations and operating within public restaurants, upon approval of the Texas Alcoholic Beverage Commission. So-called "restaurant clubs" could have issued preliminary memberships for seven days (currently three days) but no longer would have had to disclose the percentage of service charges deposited into alcoholic beverages replacement accounts. Clubs could have contracted with other entities, including their host restaurants, for management services, such as production of records required by law or rule. The commission would have had to give managing entities at least seven days' advance notice of requests for document inspection. Managing entities would have had up to 20 days from the end of the previous month to produce updated membership lists.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 2878 is unnecessary and could hamper the ability of the Texas Alcoholic Beverage Commission to properly inspect the records of private clubs."

RESPONSE:

Rep. Tony Goolsby, the author of HB 2878, said: "I absolutely disagree with the governor's veto. Seven days is about the minimum time that accurate records can be produced for a compliance audit, given the time it takes to mail new applications to a service provider who performs the data entry, prints the documentation, and returns it to the club. Any time period short of seven days results in inaccurate records that cause flawed audits. It does not affect enforcement of service to nonmembers, because agents handle infractions at the time of service and can verify preliminary applications at that time."

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

NOTES:

HB 2878 passed the House on May 10 but was not analyzed in the *Daily Floor Report*.

Requiring notarization of property-tax homestead exemption applications

HB 3184 by Danburg (Lindsay)

DIGEST:

HB 3184 would have removed from property-tax homestead exemption applications the statements attesting to the contents' factual accuracy and the applicant's personal veracity and understanding of applicable legal penalties. It would have required applicants to file statements to the same effect sworn before notary publics or other authorized officials.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 3184 would make it more difficult for vulnerable Texas citizens, such as the elderly and disabled, to apply for homestead exemptions."

RESPONSE:

Rep. Debra Danburg, the author of HB 3184, said: "Homestead exemptions provide the single most important vehicle for property owners to reduce their tax liability. At the same time, it is important that the application process contain protections against fraud. Unfortunately, instances of exemption fraud do occur. Responsible taxpayers are paying higher taxes to compensate for those who fraudulently evade their fair share. The lack of notarization makes it difficult, if not impossible, for prosecutors to pursue a criminal case against individuals who knowingly commit egregious violations.

"Fewer than 1 percent of these documents are filed by the house-bound disabled or elderly, and there is no evidence of fraud among them. A great majority of these fraudulent exemptions are filed by non-elderly and non-disabled property owners. Social service agencies, the Governor's Committee on People with Disabilities, and the Texas Department on Aging could assist these Texans with physical difficulties in the exemption application process. The elderly are not the fraud perpetrators, but for those who are, the current process is too easy and lacks the ability to effectively prosecute these cases.

"In opposing HB 3184, the governor, along with those who opposed this bill, bears a responsibility to now find and suggest an alternative solution. I am willing to work with the governor's staff on an alternative and carry the legislation next session."

Sen. Jon Lindsay, the Senate sponsor, was unavailable for comment.

NOTES:

A digest of HB 3184 appeared in Part Two of the May 4 *Daily Floor Report*.

Revising Texas Department of Criminal Justice personnel policies

HB 3185 by B. Turner, et al. (Whitmire)

DIGEST:

HB 3185 would have required the Texas Department of Criminal Justice (TDCJ) to study certain personnel policies in conjunction with the Texas Board of Criminal Justice, conduct exit interviews with employees leaving the agency, and issue annual reports about employee grievances. It also would have required specific actions involving the agency's career ladder and training programs and would have required agency management to meet with employees on a regular basis.

GOVERNOR'S REASON FOR VETO:

"The goals of House Bill No. 3185 are already being addressed by the Texas Board of Criminal Justice."

RESPONSE:

Rep. Bob Turner, the author of HB 3185, said: "In regard to the veto of House Bill 3185, I am stunned and disappointed. Gov. Perry stated that this legislation is already being addressed with the Texas Department of Criminal Justice. The veto would sound reasonable if that were the case. Over the past few years, the Legislature has been trying to get TDCJ to implement the policies within HB 3185.

With a 10 percent shortage of correctional officers threatening our public safety, it is past time to take a proactive step to ensure recruitment and retention of our correctional officers. Against our wishes, TDCJ has refused to:

- hold regular employee-management meetings to air out disputes before they mushroom into larger problems;
- require supervisors to receive training for their positions prior to promotion;
- provide all correctional officers with access to training they need to advance;
- report to the Legislature every two years on the agency's success in recruiting and retaining correctional officers;
- poll all departing correctional officers to find out all the reasons why they left TDCJ; and
- report to the Legislature every two years on grievances filed by correctional officers.

"Hopefully, the governor's comments about TDCJ addressing these problems will end in proactive action within the agency. The state prison system's inability to keep well-trained officers is a risk to us all. There is a problem here and it is getting worse."

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

NOTES: HB 3185 was analyzed in Part Two of the April 30 *Daily Floor Report*.

Creating a levee improvement district in Fort Bend County

HB 3194 by Howard (Brown)

DIGEST:

HB 3194 would have created Fort Bend County Levee Improvement District No. 16 with authority granted to such districts under Water Code, chapter 57. The district could have issued revenue bonds and bond anticipation notes to carry out its duties and could have issued refunding bonds to refund outstanding bonds and interest. Bonds issued or projects undertaken by the district would have been exempt from taxation.

GOVERNOR'S REASON FOR VETO:

"The notice provisions as required by the Texas Constitution were not met."

RESPONSE:

Neither Rep. Charlie Howard, the author of HB 3194, nor Sen. J.E. "Buster" Brown, the Senate sponsor, had a comment on the veto.

NOTES:

HB 3194 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Changing deadlines for ordering an election in political subdivisions

HB 3305 by Martinez Fischer (Van de Putte)

DIGEST:

HB 3305 would have required a political subdivision to order an election at least 45 days before the earliest allowable date for the start of early voting by personal appearance, rather than 45 days before election day. It also would have moved the application deadline for a place on the ballot for a city office from at least 45 days before election day to 45 days before the beginning of early voting by personal appearance. The governing bodies of political subdivisions other than cities or counties would have had to comply with the provisions and to adjust any affected date, deadline, or procedure. HB 3305 also would have amended the Water, Education, and Health and Safety codes by modifying the filing deadlines for a declaration of write-in candidacy in elections for self-liquidating navigation districts, school districts, junior college districts, and hospital districts to make the deadlines equivalent to similar provisions in the Election Code.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 3305 would dramatically alter pre-election deadlines — such as deadlines for candidates to file or withdraw — for local government elections. This bill apparently is intended to aid local governments by allowing them more time to finalize candidates and measure eligibility issues in order that the ballot may be printed in time for early voting. I agree that this is a salutary goal worthy of further study and future consideration. Nonetheless, I believe that House Bill No. 3305, if implemented at this time, would likely create confusion and procedural 'traps' for local governments, candidates, and voters that would outweigh any potential benefits.

"Local governments will already be faced with important legal changes impacting their next elections. For example, the 77th Legislature recently enacted, and I signed, a comprehensive uniform election dates bill. While justified as means of reducing 'turnout burnout' among voters, this legislation will cause many local governments to change the dates on which they hold elections. This disruption will be compounded by the fact that most local governments will be conducting their next elections for multimember bodies under newly redistricted lines. I believe that local governments, candidates, and voters should have the opportunity to digest these important changes before any attempt by state government to mandate wholesale changes to preelection deadlines."

RESPONSE:

Rep. Trey Martinez Fischer, the author of HB 3305, said: "It was the intent of HB 3305 to remedy concerns brought forth by local government. The bill

sought to give counties more time to prepare for an election and make election deadlines more uniform for all local governing bodies. Only the deadlines for ordering an election, and other associated deadlines, such as the deadline for filing for candidacy, were changed. My office worked with the Secretary of State's Elections Division to ensure that the bill met with their approval and did not conflict with other proposed changes in election law."

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

NOTES:

HB 3305 passed the House on May 10 but was not analyzed in the *Daily Floor Report*.

Creating the Texas Energy Resource Council

HB 3348 by Counts (Haywood)

DIGEST:

HB 3348 would have created the Texas Energy Resource Council. The council's duties would have included promoting environmentally sound energy production methods and technology; supporting educational activities regarding energy resource development in Texas; supporting energy production job training and research; educating the public on the importance of the oil, natural gas, and pipeline industries; promoting exploration for and production of energy; and promoting pipeline safety. The council would have been funded by a refundable assessment on each producer of oil, gas, or condensate — liquid hydrocarbons recovered from gas by certain methods — on the product's market value at the wellhead. A producer could not have been assessed more than $150,000 in any year.

GOVERNOR'S REASON FOR VETO:

"House Bill No. 3348 would create the Texas Energy Resource Council to be funded through an assessment on the market value of oil and gas. However, an appropriation was not made in the budget for this legislation."

RESPONSE:

Rep. David Counts, the author of HB 3348, said: "This bill is good government, just not functional due to financing. The appropriations bill was passed without addressing this expense. We will do better next time."

Sen. Tom Haywood, the Senate sponsor, supported the veto because the appropriations bill did not include a rider that would have directed that the money raised by the bill would be appropriated to the council.

NOTES:

HB 3348 was analyzed in Part Two of the May 9 *Daily Floor Report*.

Vehicle registration periods for holders of specialized license plates

HB 3441 by Gallego (Madla)

DIGEST:

HB 3441 would have made justices of the Texas Supreme Court and judges of the Court of Criminal Appeals eligible for specialized license plates reading “state judge” instead of “state official.” It would have changed the 12-month registration period deadline from March 31 to January 31 for state officials, state and federal judges, and members of Congress. Specialized plates no longer would have been issued to federal magistrates or statutory county court judges.

GOVERNOR’S REASON FOR VETO:

“House Bill No. 3441 would unnecessarily preclude statewide elected judges from using state official license plates.”

RESPONSE:

Rep. Pete Gallego, the author of HB 3441, said: “This is a simple bill meant to clarify and organize which elected officials can have which license plates. We attempted to make Court of Criminal Appeals justices and Texas Supreme Court justices eligible to use state judge license plates."

Sen. Frank Madla, the Senate sponsor, had no comment on the veto.

NOTES:

HB 3441 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in the *Daily Floor Report*.

Creating the Clean Coal Technology Council

HB 3483 by Ramsay (Sibley)

DIGEST:

HB 3483 would have created the Clean Coal Technology Council to perform legislative oversight and coordinate state agency actions regarding the study and development of clean coal technology and pilot projects. The council would have comprised three state senators, three House members, and two public members appointed by the lieutenant governor and the House speaker. The council could have designated an appropriate state agency to provide administrative staff to help the council carry out its responsibilities, including requesting and distributing federal funds.

GOVERNOR'S REASON FOR VETO:

"The study of clean coal technology is an admirable goal, and Texas should do all it can to leverage federal funding for pilot projects. However, House Bill No. 3483, which would create the Clean Coal Technology Council, is an improper delegation of authority from the executive branch to the legislative branch. The goals of this legislation also could be achieved more effectively through existing entities, such as the Railroad Commission, the Public Utility Commission, or the Texas Natural Resource Conservation Commission."

RESPONSE:

Rep. Tom Ramsay, the author of HB 3483, said: "This bill was tremendously important to Texas' industry and environment. In light of the potential energy crisis facing the nation, I find it incredible that the governor would veto a bill that could potentially bring Texas millions of federal dollars annually to address this crucial issue. The Legislature was acting within its authority and purview. I am disappointed that the governor didn't think elected officials were capable enough to act responsibly to create this council."

Sen. David Sibley, the Senate sponsor, had no comment on the veto.

NOTES:

HB 3483 was analyzed in Part Two of the April 19 *Daily Floor Report*.

Residency requirements for Lubbock County water district board members

HB 3670 by D. Jones (Duncan)

DIGEST:

HB 3670 would have required that members of the board of directors of the Lubbock County Water Control and Improvement District No. 1 be elected from each commissioners precinct in the county, along with one director elected from the district at large. Directors would have had to be residents of the precinct in which they were elected, and the at-large director would have had to reside in Lubbock County. Directors would have been elected for staggered four-year terms, and the first election would have been held in May 2002.

GOVERNOR'S REASON FOR VETO:

"The notice provisions as required by the Texas Constitution were not met."

RESPONSE:

Rep. Delwin Jones, the author of HB 3670, noted that the bill only would have established a residency requirement for board members. He said that the Texas Legislative Council had drafted the bill at his request and had not informed him of the need to comply with notice requirements. "Lawyers interpreted that it required advertisement, and the governor followed their direction. Lubbock County will get along fine. I don't have any quarrel with it."

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

NOTES:

HB 3670 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Licensing of out-of-state or foreign chiropractors

SB 144 by Carona (Gray)

DIGEST:

SB 144 would have made chiropractors who were licensed out-of-state or in a foreign country before August 1, 1979, eligible for a license to practice chiropractic in Texas. These practitioners could have received a provisional Texas license if they had at least 20 years of experience in chiropractic. They would have had to comply with Texas chiropractic licensing requirements under Occupations Code, sec. 201.302 within three years of receiving a provisional license.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 144 was crafted inappropriately to except a group of chiropractors from health licensure. Licensure standards should be applied consistently."

RESPONSE:

Neither Sen. John Carona, the author of SB 144, nor Rep. Patricia Gray, the House sponsor, had a comment on the veto.

NOTES:

SB 144 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Creating a transitional assistance plan for former TANF recipients

SB 161 by Zaffirini, et al.(Naishtat)

DIGEST:

SB 161 would have authorized the Texas Department of Human Services and the Texas Workforce Commission to establish a program of transitional support services for people who become ineligible for Temporary Assistance for Needy Families (TANF) because of rising income or time limits on benefits. The agencies would have had to determine which transitional support services were necessary and appropriate in accordance with agency rules and federal law and would have had to include transportation assistance, emergency assistance, education and job training, housing assistance, and child-care services. These services would have been provided only until a recipient became ineligible because of time limits on all benefits or until one year after the date the person's household income exceeded TANF income limits, whichever came earlier.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 161 is unnecessary because Texas can already provide the services outlined in the legislation without additional statutory authority. The state already offers two critical transitional services to all those leaving the Temporary Assistance for Needy Families welfare-to-work program: child care and health insurance. Furthermore, this bill has considerable fiscal implications that were not funded in the state's budget."

RESPONSE:

Sen. Judith Zaffirini, the author of SB 161, said: "This bill would have provided a ladder to success for those leaving welfare to work. SB 161 would have allowed local workforce programs to add more rungs to the ladder, ensuring a more successful transition off welfare. The governor's veto undermines the cornerstone of Texas' welfare-to-work policy of helping persons become independent, especially those on the verge of sustained independence."

Rep. Elliott Naishtat, the House sponsor, said: "Senate Bill 161 authorized, but did not require, local workforce development boards to provide transitional supports to former welfare recipients to help them remain off government assistance. The bill was amended to ensure that local areas would have the authority to decide whether these services were appropriate. Contrary to the governor's assertion, the bill had no fiscal implications for the state or local units of government."

NOTES:

SB 161 was analyzed in Part Two of the May 21 *Daily Floor Report.*

Requiring court costs to be deducted from refunded bail bonds

SB 173 by Carona (Hinojosa)

DIGEST:

SB 173 would have prohibited a court or magistrate from allowing a defendant to deposit cash in an amount less than the full amount of bail. Deposits would have had to be refunded to the surety on the bond or to the defendant if there was no surety, if and when the defendant complied with the conditions of the bond. The custodian of funds could have deducted from the refund any outstanding fines and court costs owed by the defendant that related to the offense for which the defendant was released on bail.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 173 would prohibit persons from paying a percentage of a cash bond as local authorities now permit. Local authorities should decide the procedures they want to use for bonds."

RESPONSE:

Sen. John Carona, the author of SB 173, had no comment on the veto.

Rep. Juan Hinojosa, the House sponsor, said: "All this bill did was to clarify existing law that says the court cannot charge 10 percent up front on personal recognizance bonds. The rule is very clear that the full amount of the surety must be returned and the court cannot charge for the personal recognizance bonds. Travis County and San Antonio are violating this law, and no one cares. I can't believe the governor vetoed this bill."

NOTES:

SB 173 was analyzed in Part Two of the May 21 *Daily Floor Report*.

Sanctions against certain regulated health facilities

SB 279 by Nelson (Gray)

DIGEST:

SB 279 would have allowed the Texas Department of Health (TDH) to place hospitals, ambulatory surgical centers, birthing centers, abortion facilities, special care facilities, end-stage renal disease facilities, or private mental hospital or mental health facilities on probation for noncompliance with regulations, rather than suspend or revoke the facility's license, as long as the violation did not endanger public health or safety. TDH could have issued an emergency suspension of an end-stage renal disease facility's license if the facility's operation created an immediate danger to public health and safety.

The bill also would have repealed the current law that made all information confidential except for certain information about an investigation. Information gathered during the investigation of complaints against hospitals and private mental hospital or mental health facilities would have been confidential and not subject to open records laws, but certain information about the complaint would not have been confidential.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 279 would repeal provisions enacted during the 76th Legislature which made confidential certain information gathered by the Texas Department of Health under subpoena or compiled in connection with a complaint and investigation. Information obtained through a subpoena should remain confidential."

RESPONSE:

Sen. Jane Nelson, the author of SB 279, had no comment on the veto.

Rep. Patricia Gray, the House sponsor, said: "In SB 279, I attempted to correct an unintended consequence from legislation I sponsored in the 76th Regular Session. As a result of the changes in statute made in this earlier legislation, the attorney general ruled in Open Records Letter ruling OR2000-0136 that the complaint history of a hospital was no longer subject to Open Records and could not be disclosed to the public. As it was not my intent to close off complaint records on hospitals or on the other licensing boards referenced in the legislation, I sought to correct the error by repealing those changes in SB 279 and take public access on complaint information regarding hospitals and these licensing boards back to where it was prior to September 1, 1999. I support public access to this important information and am disappointed the governor does not support the same principles of open government."

NOTES: SB 279 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Allowing certain school districts to require contractors to pay living wages

SB 350 by Truan, et al. (Oliveira)

DIGEST:

SB 350 would have authorized school districts within 50 miles of the Texas-Mexico border to require contractors to pay a "living wage rate" — an annual amount equal to the federal poverty level for a family of four if the prevailing wage rate for similar work were below that amount — to workers employed by the district on public works projects. A district that required a living wage rate would have had to specify the rate in the call for bids and in the contract itself. The bill would not have applied to maintenance work. Contractors who failed to pay the specified wage to their workers would have been liable to the district for a penalty not to exceed $60 per worker per day.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 350 restates authority that school districts already have under current law to pay contractors at rates established by the locally elected board of trustees and is thus unnecessary."

RESPONSE:

Sen. Carlos Truan, the author of SB 350, said: "Governor Perry's veto of the Living Wage bill sadly reminds us once again that talk is cheap but action speaks louder than words. There was a lot of talk from on high about meeting the unmet needs of the border region, the Rio Grande Valley and South Texas, but where the rubber meets the road, all we see is the veto of bills that would benefit the people who live there.... SB 350 was purely permissive. No one was compelled to do anything under SB 350. The bill passed out of Senate and House committees unanimously and then received overwhelming support on the floor of both the Senate and the House.

"Governor Perry's veto message incorrectly asserts that 'SB 350 restates authority that school districts already have under current law....' The fact is that Attorney General Cornyn issued an opinion on March 9, 1999, specifically stating that no such authority exists, and that is why I introduced SB 350. I am today sending Governor Perry a copy of General Cornyn's opinion and requesting that he ask the Secretary of State to return his veto message. If this cannot be done, there will be two direct consequences: first, a number of working families will continue to be deprived of the ability to earn a living wage because of the existence of a legal technicality which SB 350 was designed to remove, and secondly, I will again introduce a Living Wage bill when the next Legislature convenes."

Rep. Rene Oliveira, the House sponsor, said: "Perry says he is concerned about the border, but this veto shows his disrespect for the hard working,

poor people of the area. The bill was an opportunity to improve the quality of life for thousands of families and get low-wage workers off Medicaid, food stamps, and other forms of welfare. To deliberately condemn these families to public assistance is simply callous. Perry was seemingly unaware of a recent attorney general's opinion which stated that school districts did not have such authority. This legislation was designed to override that opinion. I can't believe Perry knew so little about this bill that he would claim school districts have authority when our Republican attorney general says they don't. The veto proclamation either shows incompetence or hides the real reason for the veto."

NOTES:

The HRO analysis of SB 350 appeared in Part One of the May 17 *Daily Floor Report.*

Local government corporation bidding and procurement exemptions

SB 354 by Lindsay (Coleman)

DIGEST:

SB 354 would have made local government corporations (LGCs) subject to the same statutory competitive bidding and procurement requirements for project design, construction, and related services as their creating entities. Some existing LGCs would have retained their exemptions, including municipal LGCs developing convention center hotel projects, pre-2001 water treatment and distribution facilities, and tax increment reinvestment zones. LGCs would have had to report annually to the comptroller, and their contracts would have been subject to conflict-of-interest laws.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 354 would deny local government corporations the ability to choose the least expensive and most effective procurement method. There is evidence that design-build and build-operate approaches have saved time and money on certain public works projects with no loss of quality. Enactment of this bill would curtail local government corporations' effectiveness as economic development entities."

RESPONSE:

Sen. Jon Lindsay, the author of SB 354, said: "Local government corporations should have to follow the same laws as the cities and counties that create them. By vetoing SB 354, the governor will continue to allow cities and counties to circumvent the public bid process and the other pertinent laws that apply to them; instead, local governments can create a corporation to 'hide' behind. It is my belief that in its current form, the design-build concept is flawed, as it eliminates the possibility of awarding contracts to low bidders and allows local governments to negotiate a contract with a favored friend or contributor. SB 354 would have restored public scrutiny over the various infrastructure projects being built by local government corporations."

Rep. Garnet Coleman, the House sponsor, said: "Senate Bill 354 would have improved public accountability of local government corporations and provided specific parameters for the appropriate use of design-build-operate arrangements of local government corporations without reducing their effectiveness as economic development entities. I am disappointed by the veto of this good-government bill."

NOTES:

SB 354 was analyzed in Part Two of the May 15 *Daily Floor Report*.

Creating a state strategic health plan

SB 424 by Shapleigh (Coleman)

DIGEST:

SB 424 would have directed the Texas Department of Health (TDH) to lead a study of Texans' health in relation to Texas-Mexico commerce and trade and to create a strategic plan to address any issues it found. The study also would have involved the Health and Human Services Commission, the Texas Natural Resource Conservation Commission, and the University of Texas School of Public Health at Houston. TDH would have had to consider the impact of pollution and exposure to communicable disease as a result of increased trade between Mexico and Texas, as well as access to health care for residents of the border region.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 424 requires the development of a statewide strategic health plan; however, the specific directions in this bill relate only to border health issues. I concur that these are issues that need the attention of the state. However, effective solutions should also involve the cooperation and the commitment of the United Mexican States. My disapproval of this bill is based upon the limited directives for the development of a strategic health plan and the failure to include a binational approach to developing the plan. During the next fiscal year, the Texas Department of Health will be undergoing a major reorganization. I will direct the department to develop proposals for the development of a state strategic health plan. The collection of the data directed in this bill is already a function of the respective agencies and should continue."

RESPONSE:

Sen. Eliot Shapleigh, the bill's author, said: "SB 424 would have required the Texas Department of Health to develop a state strategic health plan in coordination with other state agencies and health-related research institutions such as the University of Texas School of Public Health. Three interim studies (two by committees appointed by then Lt. Gov. Perry) pointed to the clear connection between trade and public health. Texas, with the four principal NAFTA trade corridors connecting Mexico to our most populated cities, needs a strategic plan for public health. The plan would have focused on the increase in industrial pollution, environmental changes, population growth, and more. By vetoing this bill, Gov. Perry is essentially asking that the state continue its fragmented, piecemeal, and inadequate response to public health threats presented from increased trade."

Rep. Garnet Coleman, the House sponsor, said: “The potential effects of increased trade with Mexico on the health of Texans have yet to be studied in any systematic way. Senate Bill 424 would have promoted a strategic approach to identifying the potential health effects of increased trade and required the development of a plan to address any observed problems. The development of this plan would by necessity have to involve the United Mexican States, which is why I am mystified by the governor’s rationale for this veto.”

NOTES:

SB 424 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Management of the Permanent School Fund

SB 512 by Duncan, et al. (Gallego, Keel)

DIGEST:

SB 512 would have changed the management and investment of the Permanent School Fund (PSF) by the State Board of Education (SBOE). It would have required the SBOE to contract with the State Auditor's Office (SAO) to investigate written allegations of wrongdoing in PSF investment or management. It also would have created a PSF advisory committee to select an independent firm with appropriate experience to evaluate PSF investment management practices and performance as often as the Legislative Audit Committee found necessary or advisable.

SB 512 would have amended PSF ethics and conflict-of-interest policies to apply them explicitly to "interested persons," defined as anyone who applied for or received anything of value as a result of PSF investments. Reports would have had to be filed on expenditures of more than $50 on behalf of an SBOE member, a committee member, the commissioner, an interested person, or an employee of the agency or of a nonprofit corporation created for PSF investment management. If an interested person entered into certain arrangements involving PSF management or investment and failed to disclose a relationship subject to the conflict-of-interest section, the comptroller or SBOE could have voided the arrangement and declared the person ineligible to contract for such business.

The bill would have amended PSF reporting requirements to allow SBOE to determine the frequency of reports; required SBOE to exercise the constitutionally prescribed standard of care in making investment decisions; and required a commercial bank to execute an agreement fully indemnifying the PSF and Available School Fund against loss due to borrower default or due to the failure of the bank to execute its responsibilities properly.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 512 erodes the constitutional power of the SBOE. By establishing an investment advisory committee appointed by officers of the Legislature and allowing the comptroller to have the power to void agreements entered into by the SBOE, SB 512 would alter the balance of power constitutionally vested in the board to make decisions regarding the PSF.

"The SBOE must remain vigilant in its efforts to act responsibly in all actions and avoid even the slightest appearance of impropriety, particularly with respect to the PSF. In doing so, the board should adopt ethics provisions

similar to those in the proposed legislation, and the Subcommittee on Finance should undertake its own actions to obtain expert advice on investment decisions.

"The chair of the SBOE and the commissioner of education are gubernatorial appointees. They have the constitutional and statutory authority necessary to enact many of the provisions of Senate Bill No. 512 to ensure fiduciary responsibility, sound investment practices, and the integrity of the investment process. It is by these means that the proposed changes to the practices and procedures of the SBOE should be addressed."

RESPONSE:

Sen. Robert Duncan, the author of SB 512, said: "It is true the Texas Constitution places the responsibility of managing the PSF with the SBOE; however, every member of the SBOE is an elected official with no requirement for experience in investment management. I contend that SB 512 as it was finally passed did not erode the constitutional power of the SBOE. The advisory board would have been charged with providing appropriate input and advice for the investments of the PSF, which has a value of more than $22 billion and serves as a permanent endowment for the support of the state's public education system. In the past, the SBOE has failed to appoint a formal advisory committee that met on a regular basis due to board political struggles, both internally and with the Texas Education Agency. SB 512 addressed this failure.

"The governor's veto proclamation states, '...the Subcommittee on Finance should undertake its own actions to obtain expert advice on investment decisions.' I believe the governor intends, by that statement, for the SBOE to appoint a formal advisory board to provide sound, unbiased advice for the management and investment of the PSF which is not comprised of persons with conflicts of interest.

"SB 512 also provided reasonable and effective ethics requirements that would have assisted the SBOE in addressing recent findings and reports of impropriety or the appearance of impropriety involving conflicts of interest. The Governor's proclamation encourages the SBOE to implement similar ethics rules.

"I believe the instructions given in the governor's veto proclamation attempt to achieve the same goals as SB 512. It will be interesting to see if the SBOE follows the governor's recommendations and responds to the concerns raised by the Legislature."

Rep. Pete Gallego, the House sponsor, said: “The House version of the bill was the product of a lengthy study during the interim by the House Committee on General Investigating and the SAO, both of which included recommendations for major oversight revisions to the PSF. Revisions are needed to ensure the integrity of the fund, and apparently, the governor agrees with that. However, the bill would not have encroached on the constitutional authority of the SBOE as stated in the governor’s veto message.”

Rep. Terry Keel, the House cosponsor, said: “Contrary to the governor’s veto proclamation, the bill as passed did not undercut any authority of the board nor erode any constitutional authority. In fact, the board was advisory in nature and would have protected the SBOE from potential conflicts of interest. It is noteworthy that the governor’s veto proclamation suggests that the state board should obtain expert advice in investment decisions. This necessity is the very reason why prior problems and conflicts of interest have plagued the current board and will continue to be a problem for the board in the future.”

NOTES:

The HRO analysis of SB 512 appeared in Part One of the May 22 *Daily Floor Report.*

A related measure, HJR 74 by Keel, et al., which would have proposed a constitutional amendment to remove PSF investment authority from SBOE and create an appointed PSF investment board, died on the House floor.

Creating a rural physician relief program

SB 516 by Madla (Hawley, et al.)

DIGEST:

SB 516 would have directed the Center for Rural Health Initiatives to create a program for physician relief services in counties with populations of 50,000 or less or in areas designated as health professional shortage areas or medically underserved areas. It would have granted priority to physicians practicing general family medicine, general internal medicine, and general pediatrics, solo practitioners, sparsely populated counties, counties without hospitals, or counties with hospitals that did not have a continuously staffed emergency room. The center would have had to recruit physicians, including residents, to participate in the program and could have charged a fee for participation. The bill also would have allowed certain physician candidates to retake portions of the medical licensing exam up to six times if the candidate promised to provide rural relief services.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 516 would compromise the integrity of the medical licensure act by allowing a person who failed one portion of the medical licensure exam to retake that portion up to six times if they agree to practice in a rural community with a population of less than 50,000. I support efforts to provide needed and qualified relief to rural physicians, but I cannot support the provision of substandard care to rural counties."

RESPONSE:

Sen. Frank Madla, the author of SB 516, had no comment on the veto.

Rep. Judy Hawley, the House sponsor, said: "It appears that a floor amendment was the basis of the veto. The floor amendment was actually meant to address a specific case. Unfortunately, the underlying problem addressed by SB 516 remains. The bill provided for a rural physician relief program which had been identified by solo rural practitioners as a top priority for them."

NOTES:

SB 516 was analyzed in Part Two of the May 16 *Daily Floor Report*.

Exempting universities from Texas Youth Camp Safety and Health Act

SB 575 by Staples (Sadler)

DIGEST:

SB 575 would have exempted from provisions of the Texas Youth Camp Safety and Health Act a facility or program operated by or on the campus of a higher education institution or of a private or independent higher education institution.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 575 would exempt certain programs from the Texas Youth Camp Safety and Health Act. The need for this exemption has not been demonstrated at this time."

RESPONSE:

Sen. Todd Staples, the author of SB 575, said: "Rather than duplicating efforts made by the universities to regulate summer programs on their campuses, this bill would have maintained what universities across the state currently oversee on their campuses. This act would have not lowered the standards already in place at these universities; it would have simply removed duplicative efforts made on the campuses of our universities.

"I understand the governor's viewpoint on this bill and look forward to working with him and his staff as well as the Texas Department of Health over the interim to ensure the standards on these campuses are maintained for all Texas children."

Rep. Paul Sadler, the House sponsor, was unavailable for comment.

NOTES:

SB 1210 was analyzed in Part Two of the May 16 *Daily Floor Report.*

Revising regulation of the practice of professional engineering

SB 697 by Wentworth (Haggerty)

DIGEST:

SB 697 would have authorized the Board of Professional Engineers to require up to eight hours per year of continuing education for people regulated by the board. The board would have had to adopt a registration fee for sole proprietorships that would have been one-half of the registration fee for other engineering firms. The board also could have required practicing engineers that were exempt from licensing requirements to register and pay a fee of up to $25.

SB 697 would have exempted business entities or an entity's employees or contractors from regulation to the extent that the entity's services or products were defense-related and provided to the U.S. government or to a foreign government; commercial aircraft, and the entity held a certificate issued by the Federal Aviation Administration; or space vehicles or services subject to federal regulation or that were for sale or use outside the United States.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 697 permits the imposition of a registration requirement and a fee on private-sector engineers who are currently exempt from licensing. The state should not take action that would exacerbate the current shortage of engineers in Texas."

RESPONSE:

Sen. Jeff Wentworth, the bill's author, said: "SB 697 was vetoed because of a floor amendment added in the House. This amendment gave the Board of Professional Engineers permissive authority to require engineers exempted under the Act to register with the Board and pay a small fee. Neither I nor the groups supporting SB 697 had any position on this amendment and, had anyone objected, a conference committee would have been requested to remove it. However, since no opposition was expressed at that time, the Senate concurred in the amendment.

"Since the amendment was permissive, the Governor's Office was asked to sign the bill but instruct the TBPE not to implement the offensive provision, thereby saving the positive portions of the bill. Regrettably, the governor chose instead to kill the good parts of the bill along with the bad."

Rep. Pat Haggerty, the House sponsor, had no comment on the veto.

NOTES:

SB 697 was analyzed in Part Two of the May 16 *Daily Floor Report*.

Deferred disposition, driving safety courses for traffic violations

SB 730 by Harris (Thompson, et al.)

DIGEST:

SB 730 would have added to the list of actions that a judge may require a defendant to take if a sentence has been suspended and the person is placed on probation. A judge could have required a defendant to complete a state-approved driving safety course or another course chosen by the judge. The bill also would have changed the language specifying what offenses are covered by the procedures for the deferred disposition of traffic offenses. This section would have applied only to offenses within the jurisdiction of a justice or municipal court that involved the "rules of the road" traffic offenses in Transportation Code, Title 7, subtitle C, the offense of not observing warning signs, and some traffic offenses by minors.

SB 730 also would have required that a peace officer charging a person, including a child, with a traffic offense to issue a written citation rather than arresting and taking the person before a magistrate if the alleged violation was a Class C misdemeanor, punishable by a maximum fine of $500.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 730 limits a peace officer's authority to arrest for a traffic violation to four specific situations. Peace officers should retain their existing authority to use their discretion to arrest for a traffic violation."

RESPONSE:

Sen. Chris Harris, the author of SB 730, had no comment on the veto.

Rep. Senfronia Thompson, the House sponsor, said: "Soccer moms take note: you can be arrested in front of your children for driving too slowly on a deserted residential street and not wearing a seat belt because you're retracing the path you just took from soccer practice to look for a toy that's flown out the windows.

"Texans of color take note: racial profiling will soon be prohibited. We are beginning to establish drug courts in Texas, and corroborating evidence must be used in cases involving informants or probationary law enforcement officers. But, now, you can be arrested at any time for any reason. Even Gov. Perry could have been arrested for being in a speeding vehicle."

NOTES:

SB 730 was analyzed in Part Two of the May 16 *Daily Floor Report*.

Informing noncustodial parents of their right to modify child custody

SB 769 by Harris (A. Reyna, et al.)

DIGEST:

SB 769 would have required a court that issued an order regarding possession of or access to a child, including an order providing for the modification of possession or access, to notify a noncustodial parent of the parent's right to file for modification of the order. The notice would have had to include the grounds for modification as listed in Family Code, sec. 156.301, and to contain specific wording. Forms used in providing services to the public also would have had to contain this notice.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 769 unintentionally conflicts with House Bill No. 596 by referring to provisions of the Family Code which House Bill No. 596 repeals. This conflict creates confusion as to the intent of the legislation and its application."

RESPONSE:

Sen. Chris Harris, the author of SB 769, had no comment on the veto.

Rep. Arthur Reyna, the House sponsor, said: "HB 596 prevented the enactment of SB 769 because HB 596 repealed the section of the Family Code (regarding possession of or access to a child), which SB 769 would have amended."

NOTES:

SB 769 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report.*

Sanctions against certain health professionals

SB 791 by Nelson (Gray)

DIGEST:

SB 791 would have authorized the Texas Department of Health or the licensing body to suspend certain health professionals' licenses on an emergency basis if continued practice would constitute an imminent threat to public welfare. It would have established administrative, civil, and criminal penalties for certain violations by some health professionals, including midwives, spectacle dispensing opticians, contact lens dispensers, speech-language pathologists, audiologists, hearing instrument dispensers, athletic trainers, massage therapists, marriage and family therapists, medical radiologic technologists, medical physicists, perfusionists, orthotists, prostheticists, and dietitians.

The bill also would have repealed provisions added as a part of the non-substantiative revision to the Occupations Code that generally makes confidential all information concerning professional licensing complaints and investigations, except under certain circumstances. SB 791 would have allowed the licensing board's rules and applicable laws to govern the confidentiality of information.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 791 would repeal provisions enacted during the 76th Legislature which made certain information gathered by the Texas Department of Health under subpoena or compiled in connection with a complaint and investigation confidential. Information gathered by a regulatory agency through a subpoena should retain some degree of confidentiality.

RESPONSE:

Sen. Jane Nelson, the author of SB 791 , had no comment on the veto.

Rep. Patricia Gray, the House sponsor, said: "In SB 791, I attempted to correct an unintended consequence from legislation I sponsored in the 76th Regular Session. As a result of the changes in statute made in this earlier legislation, the attorney general ruled in Open Records Letter ruling OR2000-0136 that the complaint history of a hospital was no longer subject to Open Records and could not be disclosed to the public. As it was not my intent to close off complaint records on hospitals or on the other licensing boards referenced in the legislation, I sought to correct the error by repealing those changes in SB 791 and take public access on complaint information regarding hospitals and these licensing boards back to where it was prior to September 1, 1999. I support public access to this important information and

am disappointed the governor does not support the same principles of open government.”

NOTES: SB 279 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Municipal payroll deductions for employee association dues

SB 846 by Cain (Naishtat)

DIGEST:

SB 846 would have required a city with a population over 50,000 to deduct from a municipal employee's salary an amount requested by the employee for payment of membership dues to a bonafide employees' association, if the employee requested the deduction in writing. The bill would have applied only to cities that allowed deductions for purposes other than charity, health insurance, taxes, or other deductions required by law.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 846 would undermine local control over municipal payroll deductions by mandating that certain municipalities provide for certain payroll deductions. Those municipalities currently have the authority to do so and the state should not require that they exercise that authority."

RESPONSE:

Sen. David Cain, the author of SB 846, was unavailable for comment.

Rep. Elliott Naishtat, the House sponsor, said: "SB 846 would have required cities with populations of 50,000 or more to allow payroll deductions at the request of an employee if, and only if, the municipality already permitted deductions for purposes other than charities, health insurance, taxes, or other deductions required by law. The governor implied that the bill mandated that municipalities provide for certain payroll deductions. The bill did not place a mandate on a municipality unless the municipality was already making deductions for another organization."

NOTES:

The companion bill, HB 1957 by Naishtat, was analyzed in Part Three of the May 4 *Daily Floor Report*.

Increasing penalties for false reports to peace officers

SB 904 by Bernsen (Ritter)

DIGEST:

SB 904 would have increased the penalty for making a false statement to a law enforcement officer investigating a felony from a Class B misdemeanor (punishable by up to 180 days in jail and/or a maximum fine of $2,000) to a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000). The bill also would have amended the Penal Code to establish the offenses of making a false statement in application for a protective order, a false report of family violence, and a false report of child abuse or neglect.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 904 would discourage victims of family violence from reporting abuse and would undermine recent efforts to encourage these victims to seek the protection they need."

RESPONSE:

Neither Sen. David Bernsen, the author of SB 904, nor Rep. Allan Ritter, the House sponsor, had a comment on the veto.

NOTES:

SB 904 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

Regulating the state Medicaid program

SB 1156 by Zaffirini, et al. (Coleman, et al.)

DIGEST:

SB 1156 would have changed Texas' Medicaid program in the areas of administration, eligibility and benefits, managed care, and demonstration projects. The bill would have transferred Medicaid administration from the Texas Department of Health (TDH) to the Health and Human Services Commission (HHSC) and would have authorized HHSC to transfer any other power, duty, function, or other aspect of the Medicaid program, subject to the determination of a legislative oversight committee.

HHSC would have had to develop strategies to improve management of the cost, quality, and use of Medicaid services and to develop a consolidated Medicaid appropriations request reflecting relevant data such as caseloads, rates, waivers, and eligibility.

The Texas Department of Human Services (DHS) could have contracted with hospitals, counties, and other entities to determine program eligibility. Under a new health insurance premium payment program, TDH could have paid premiums for group health coverage instead of Medicaid coverage if private coverage were available and determined to be less expensive.

TDH could have established sliding-scale cost sharing for prescriptions in Medicaid. Eligibility for Medicaid services would have been extended to legal immigrants who now are precluded and to independent foster-care adolescents who are not otherwise eligible for Medicaid. DHS would have had to develop a program of all-inclusive care for the elderly in accordance with federal guidelines. The bill would have re-enacted the state's Medicaid managed care program, preventing its expiration on September 1, 2001.

SB 1156 would have established a number of demonstration projects, including for claims processing, psychotropic medications, AIDS/HIV medications, federal-local medical assistance for adults, women's health services, a migrant children's health-care network, case management, and a waiver to provide Medicaid benefits to disabled adults.

GOVERNOR'S REASON FOR VETO:

"I support consolidating more of the Medicaid program at the Health and Human Services Commission. This consolidation, which is already authorized under existing law, will provide more oversight and greater

opportunity for program efficiency. Therefore, I am directing the commission to proceed with the consolidation plans.

"However, Senate Bill No. 1156 would also require numerous programmatic changes, including the development and implementation of several demonstration projects, that must be conducted concurrently with the reorganization. Over the next few months, the commissioner's primary focus must be on ensuring sound and effective management of the Medicaid program as well as implementing other legislation, such as simplifying eligibility and enrollment for children.

"The commission may, after appropriate public hearing and complete fiscal analysis, also pursue proposals included within this bill that will improve the health of Texans, yield cost savings, and increase program efficiency and effectiveness."

RESPONSE:

Sen. Judith Zaffirini, the bill's author, said: "The veto of SB 1156 may undermine future funding of SB 43, Medicaid simplification, and cause local taxpayers to pay 100 percent of health-care costs that could have been paid by federal-state matches as high as 90-10. This complex bill not only would have restructured Medicaid and saved $416.8 million while improving the health of Texans, but also would have improved Medicaid rates for high-volume providers. I disagree that the restructuring and savings will be accomplished without this bill."

Rep. Garnet Coleman, the House sponsor, said: "I do not understand why the governor vetoed this major piece of legislation, which passed both chambers of the Legislature with broad bipartisan support. We moved this bill very deliberately through the legislative process and offered many opportunities for input, but never heard from the governor that he had strong concerns that would lead him to veto the bill. I am particularly concerned about the effect of this veto on future legislatures, because Senate Bill 1156 was estimated to save the state an estimated $416.8 million over the next five years by improving efficiency in the Medicaid program and drawing additional federal funds for health care through the use of innovative demonstration projects. These demonstration projects would have expanded access to health care for the mentally ill, people with HIV, and low-income working women, while also drawing additional federal funds. These new federal dollars would have been especially helpful for local counties and hospital districts, who are currently bearing the burden of providing services to these individuals using

100 percent local funds. Many of these counties and hospital districts will have to contemplate local tax increases because of the veto.

"Despite the veto, I hope the governor will recognize the wisdom of these demonstration projects and direct our state agencies to find a way to pursue them post haste."

NOTES:

Some provisions of SB 1156 are contained in other bills that the governor signed and have become law, including the health insurance premium payment program (HB 3038 by Isett), expanding Medicaid for foster-care adolescents (SB 51 by Zaffirini), the program of all-inclusive care for the elderly (SB 908 by Shapleigh), and the migrant children's health-care network demonstration project (HB 1537 by Coleman).

SB 1156 was analyzed in Part One of the May 21 *Daily Floor Report.*

Requiring law clerks working for a court to disclose future employment

SB 1210 by West (Dunnam, et al.)

DIGEST:

SB 1210 would have required law clerks employed by a court for a specific and limited term who entered into an agreement for employment with or accepted a benefit or "clerkship bonus" from a law firm or other private entity to file a disclosure statement with the court clerk or with a public information officer designated by the court. Information in the disclosure, including the attorney's name, the name of the law firm or private entity, and any benefit received or anticipated, would have been considered public information. Law clerks who accepted employment or clerkship bonuses from law firms or private entities would have had to recuse themselves from any matter before the court that involved the law firm or private entity. For one year after leaving the court's employ, the law clerk could not have participated before the court on behalf of the law firm or private entity. Attorneys who violated these provisions would have been subject to sanctions by the State Bar of Texas.

GOVERNOR'S REASON FOR VETO:

"SB 1210 is overly broad, vague, and restricts the ability of judges across the state to hire qualified judicial clerks, who are instrumental to the functioning of courts."

RESPONSE:

Sen. Royce West, author of SB 1210, had no comment on the veto.

Rep. Jim Dunnam, the House sponsor, said: "If the governor had chosen to reveal his problems with SB 1210, he would have found that SB 1210 does not place the Supreme Court in jeopardy of losing good law clerks. Surely the Supreme Court can find and hire a mere 18 law clerks whose primary goal is not immediate financial gain, but rather whose only priorities are public service to the State of Texas and learning from the prestigious position they hold as a clerk for the court.

"The veto of SB 1210 does not change existing law or the Penal Code provisions protecting the public trust regarding improper influence in our judicial system. It also does not change the intent behind the Penal Code in assuring that no public servant can accept or agree to accept a benefit from someone who might have business before their governmental body.

"It is unfortunate that the governor disagreed with SB 1210, which simply provided clear public disclosure when money or deferred compensation was offered to a law clerk by a law firm who does business before the Supreme

Court prior to their accepting a job with the court, and which also closed the revolving door of clerks leaving the court and immediately doing work on cases which might have been pending. Public trust in our courts must be ever guarded, and even the appearance of buying influence before our court must be strongly fought at every opportunity. The governor's veto does the opposite."

NOTES:

SB 1210 was analyzed in Part Two of the May 16 *Daily Floor Report.*

Revisions to Texas Commission on Private Security

SB 1224 by Harris (B. Turner)

DIGEST:

SB 1224 would have revised various provisions of the Occupations Code relating to the Texas Commission on Private Security (TCPS). It would have revised the definitions of "alarm systems" and "detection devices" and provisions allowing a private security company to employ a peace officer as a "extra job coordinator" to schedule other officers. It would have stricken existing provisions regarding TCPS fees.

SB 1224 also would have made it a state-jail felony (punishable by 180 days to two years in a state jail and an optional fine of up to $10,000) for a person to contract with a bail bondsman to apprehend someone who had forfeited a bond unless the "bounty hunter" was a peace officer, licensed private investigator or bail bondsman, agent of a corporate bail bond surety, or full-time employee of the bail bondsman. It would have granted commissioned security officers, bail bondsmen, agents of a corporate bail bond surety, or a full-time employees of bail bondsmen authority to execute arrest warrants when a bond was surrendered by the bondsman or if the bond was forfeited by the defendant.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 1224 attempts to improve public safety but is overly broad and would result in restraint of trade. Additionally, it would give bail bond companies the power to make arrests under certain circumstances."

RESPONSE:

Neither Sen. Chris Harris, the author of SB 1224, nor Rep. Bob Turner, the House sponsor, had a comment on the veto.

NOTES:

SB 1224 was analyzed in Part Three of the May 18 *Daily Floor Report*.

Medicaid reimbursement for dental services

SB 1411 by Moncrief (Maxey, et al.)

DIGEST:

SB 1411 would have defined the dental services that could be reimbursed by Medicaid. It would have restricted reimbursement to services or products considered necessary by a prudent dentist acting in accordance with generally accepted practices. The Texas Department of Health would have had to ensure that stainless steel crowns were not used as a preventative measure; to require dentists to comply with a record-keeping standard for all patients; to develop an alternative evaluation system to replace the 15-point system used to determine the dental necessity of hospitalization and general anesthesia; and to implement antifraud measures. The bill also would have changed reimbursement rates to make them the same for a stainless steel crown as for other fillings, reduced the reimbursement rate for hospitalization, and eliminated certain other charges.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 1411 is unnecessary as it contains provisions substantially similar to provisions included in House Bill No. 3507, which I have signed into law."

RESPONSE:

Sen. Mike Moncrief, the author of SB 1411, said: "During the legislative session I carried two bills which addressed dental fraud in the Medicaid program and the excessive use of steel crowns, SB 1411 and HB 3507. Both bills instituted various changes to help eliminate abuse of the system and to improve the quality of services and care offered by the program.

"A conflict in the language between the bills came to my attention shortly after the session ended. SB 1411 was passed with language which requires the Health and Human Services Commission to set the reimbursement rate for a steel crown at an amount equal to the reimbursement for an amalgam or resin filling. This language was removed in the Senate after concerns were raised by the dental community. However, this language was reinstated due to a drafting error in a House amendment. This error was not detected or corrected prior to passage of the legislation. HB 3507 contained the appropriate and agreed-upon language. In light of these concerns, we discussed the issue with the Governor's Office and agreed that a veto was the best course of action."

Rep. Glen Maxey, the House sponsor, said: "The governor's veto proclamation is accurate. In SB 1411, a large portion of the Medicaid dental

fraud prevention was the equalization of reimbursement rates for stainless steel crowns and amalgam fillings. Currently, stainless steel crowns are reimbursed at a higher rate than amalgam fillings, which can be an incentive for fraud. Both SB 1411 and HB 3507 created a new definition for medical necessity, which can prevent inappropriate use of stainless steel crowns. Even though we have the definition, we have to prove that the use of the crown is inappropriate. Making the reimbursement equal would have removed the financial incentive to commit fraud and ensured that the use of stainless steel crowns was medically appropriate."

NOTES:

SB 1411 was analyzed in Part Two of the May 18 *Daily Floor Report*. HB 3507 by Maxey, et al. was analyzed in Part Three of the May 2 *Daily Floor Report*.

Prohibiting liability insurers from issuing certain litigation guidelines

SB 1654 by Bernsen (Dunnam)

DIGEST:

SB 1654 would have prohibited a liability insurer from submitting to an attorney hired to defend an insured person a litigation-management guideline that required or suggested that the attorney do something that:

- interfered with the attorney's duty of loyalty to the insured and the duty to exercise independent professional judgment;
- interfered with the attorney/client relationship between the attorney and the insured; or
- resulted in the waiver of any privilege of the insured.

The insurer could not have required the attorney to obtain the insurer's approval before performing a task or incurring an expense in the representation. An agreement between an insurer and an attorney for the attorney to take one of the above actions would have been void, as would be an agreement by which the insured waived the bill's prohibition against such an agreement between the attorney and the insurer.

An insured person would have had a cause of action against an insurer for damages caused by a prohibited agreement and for an injunction against violations. The insured or the attorney could have sued the insurer to recover the reasonable value of the attorney's services and expenses in representing the insured. Prevailing plaintiffs in such suits would have been entitled to attorney's fees and costs, and an insurer could have been further liable for a civil penalty of up to $5,000 for the first and second violations and up to $10,000 for any subsequent violations. The attorney general could have sued to collect this civil penalty upon the request of the insurance commissioner.

GOVERNOR'S REASON FOR VETO:

"Although Senate Bill No. 1654 is ostensibly aimed at protecting consumers, I am concerned that its practical effect will be to invite litigation, which, in turn, would ultimately increase costs to the very consumers it seeks to protect."

RESPONSE:

Sen. David Bernsen, the author of SB 1654, had no comment on the veto.

Rep. Jim Dunnam, the House sponsor, said: "SB 1654 protected consumers. Rather than increasing costs, SB 1654 would have assured that consumers got what they paid for with their premiums and what they were entitled to under their insurance contract — an independent attorney whose only loyalty

is to that consumer. Insurance companies have been denying those rights to their insureds for some five years now, and there have been no resulting decreases in premiums for any alleged savings. This reveals patently that SB 1654, which would have returned consumers to their rightful status of five years ago, would not have increased costs. Further, contrary to the governor's contention, the consumer protections offered by SB 1654 would have reduced litigation by discouraging and eliminating the type of harmful conduct by insurance companies that all too often leads to more, not less, litigation. The governor and his office expressed no concerns with SB 1654 to House sponsors prior to the veto announcement. The veto is a reminder of the power that the insurance industry holds over the rights of insurance consumers at the very center of our state government."

NOTES:

The HRO analysis of SB 1654 appeared in Part One of the May 21 *Daily Floor Report.*

Allowing out-of-state peace officers to carry weapons

SB 1713 by Van de Putte (Garcia)

DIGEST:

SB 1713 would have amended the Penal Code, sec. 46.15 to exempt out-of-state peace officers and special investigators from provisions prohibiting the unlawful carrying of weapons.

GOVERNOR'S REASON FOR VETO:

"Senate Bill No. 1713 authorizes peace officers from other states to possess their weapons at any time and in any place in Texas, like Texas peace officers may, without consideration of reciprocity with other states."

RESPONSE:

Sen. Leticia Van de Putte, the author of SB 1713, said: "The governor's veto proclamation states that Senate Bill 1713 extends the rights of Texas peace officers to possess their weapons at any time and in any place in Texas to peace officers from other states, 'without consideration of reciprocity with other states.' I believe that concentrating on the issue of reciprocity gets away from the real issues addressed in this bill. Senate Bill 1713 was intended to accomplish two goals. First, this bill served to clarify the fact that Texas peace officers had the legal right under existing law to possess their weapons in any establishment, public or private, at any time. Recently, this clarification has become necessary due to an increasing number of incidences concerning establishments refusing to admit peace officers in possession of their firearms. Second, Senate Bill 1713 was intended to extend the weapon-carrying rights of Texas peace officers to out-of-state peace officers.

"As to Gov. Perry's concern that the bill did not include a reciprocity clause, one was not included at the urging of the Texas law enforcement community, who fully supported the bill. Law enforcement officials chose instead to rely on trust — trust that officers from other states who carry here in Texas will abide by Texas law, as Texas peace officers who carry in other states abide by those states' laws. The reality of being a peace officer is that the job is 24/7, without end. I and others who understand this important distinction felt that it would benefit both visiting peace officers and the State of Texas to extend this privilege to the respected and well-trained members of our neighboring law enforcement communities.

"Jim Jones of the San Antonio Police Officers' Association said, 'This bill that [Sen. Van de Putte] authored was a very good bill which clarified the current statute pertaining to the carrying of weapons by peace officers and

special investigators.' He said that the bill addressed an issue of great concern to law enforcement officers throughout Texas."

Rep. Domingo Garcia, the House sponsor, said: "This bill was intended to clarify and codify specific areas of existing law. I thought this was a pro-police bill, and I cannot understand why he vetoed it."

NOTES:

SB 1713 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.

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