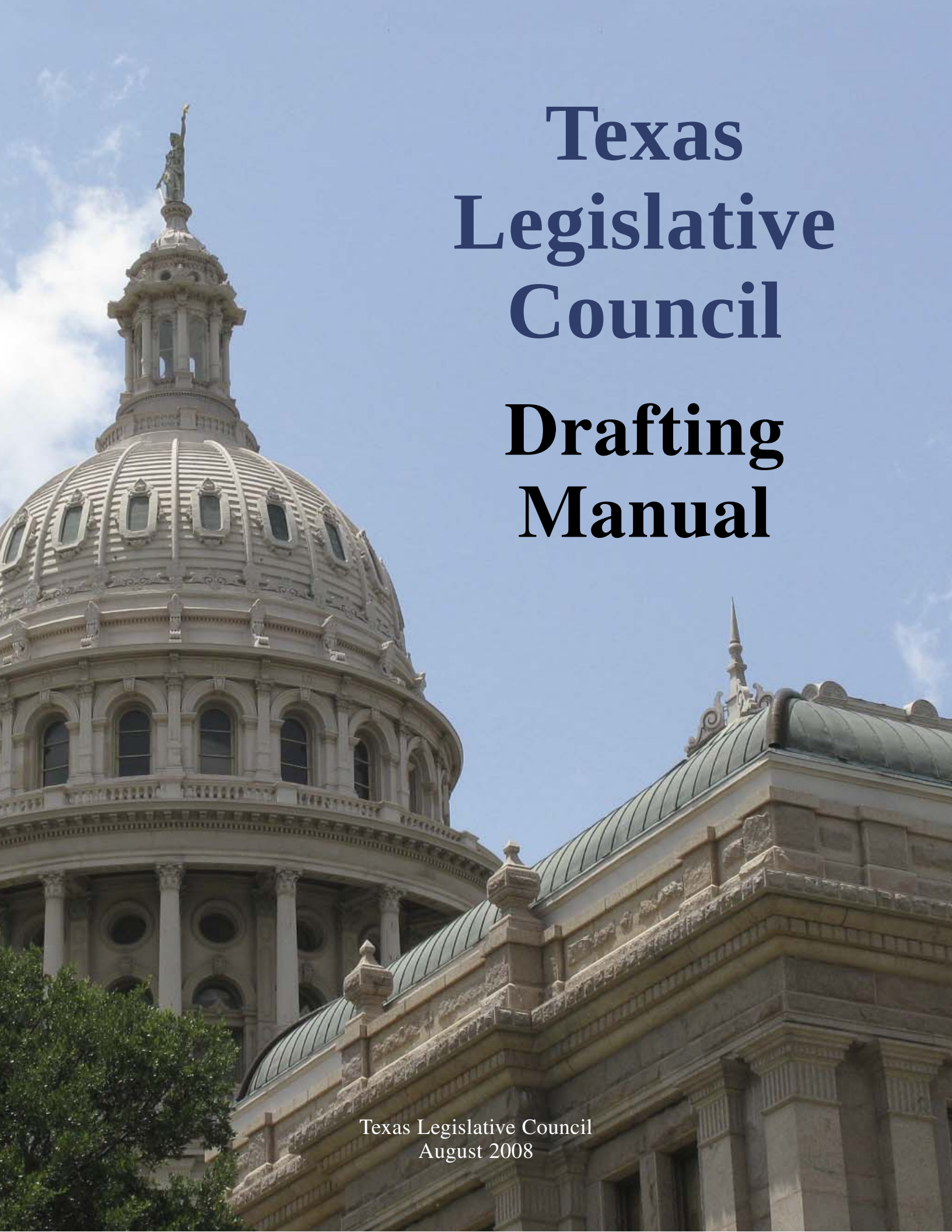

Texas Legislative Council

Drafting Manual

Texas Legislative Council
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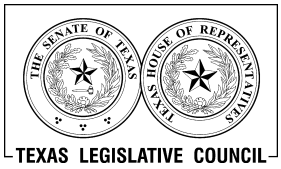

Lieutenant Governor David Dewhurst, Joint Chair
Speaker Joe Straus, Joint Chair
Milton Rister, Executive Director

for the 81st Legislature

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FOREWORD

This edition of the *Texas Legislative Council Drafting Manual* contains updated examples throughout the book. It also incorporates the following specific changes:

- deletion of a subsection regarding Section 325.016, Government Code, which was repealed by the 80th Legislature (former Sec. 3.03(g))
- additional examples of language introducing amendments to law (Sec. 3.10(c))
- new explanation of how to renumber a statute in a bill other than the general code update bill (Sec. 3.10(f))
- revised instructions regarding the arrangement of amendments in an amendatory bill (Sec. 3.10(h))
- revised section on drafting repealers (Sec. 3.11)
- revised recommended format for temporary constitutional provisions (Sec. 4.07(b))
- new description of member resolutions (Sec. 5.07)
- additional examples of floor and committee amendments drafted for use in the senate (Sec. 6.03)
- new example showing the heading of a committee substitute for a joint resolution (Sec. 6.04)
- revised instructions for drafting side-by-side analyses (Sec. 6.06)
- additional examples illustrating how to express multiple numbers in a single sentence (Sec. 7.03, under General Rules)
- revised description of the use of parentheses in legislative documents (Sec. 7.08)
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- new section on the use of notes and footnotes (Sec. 7.11)
- amended list of legalese and preferred usage (Sec. 7.29)
- new section on metes and bounds (Sec. 7.39)
- revised instructions for citing session laws (Sec. 7.64)
- amended list of editing marks (Sec. 7.82 and inside back cover)

- updated lists of codes enacted under the council's statutory revision program (Sec. 8.09)
- amended lists of cities showing which are classified as Census Designated Places (Appendixes 1 and 3)
- updated information on requirements applicable to local bills and bracket bills (Appendix 7)
- revised discussion on drafting public securities provisions (Appendix 8)
- updated legislative drafting bibliography (Appendix 10)

As with prior editions, this manual is intended primarily for use by the drafting staff of the legislative council. However, the council staff recognizes that a broader audience will find this manual useful, including legislators, legislative staff, lobbyists, and others with a particular interest in legislation and the legislative process.

The legal and research staffs contributed the bulk of the substantive text of the manual. Editor for this edition is Charlotte Norris, assistant chief legal editor. Production of the manual is under the general supervision of Eric Hougland, deputy director of the legal division. Comments and suggestions for improvement are solicited and may be directed to Mr. Hougland.

CHAPTER 1
INTRODUCTION

This manual explains how legislative drafting is done by the staff of the Texas Legislative Council. Although it is primarily intended for use by the council staff for training and as a reference guide, other participants in the legislative process, including legislators and legislative staff members, may find it helpful in analyzing legislative documents.

The reader of this manual should be aware of its shortcomings. A manual, by its nature, treats only the fundamental aspects of a subject, thus tending to make the complicated seem simple. The aspiring drafter should bear this in mind and should no more expect to become an expert drafter by studying this manual than a home handyman should expect to become a master carpenter by studying a do-it-yourself manual. While a few of the rules stated in this manual, such as the one requiring each bill to contain the constitutionally prescribed enacting clause, are absolute, most are more or less conditional. A new drafter gains through experience the ability to recognize circumstances justifying deviation from a general rule.

A second inherent shortcoming of a drafting manual is that by focusing on the more technical aspects of drafting such as citation form, style, and English usage, a simplistic image of the drafter as scrivener is fostered. This narrow focus is at the expense of the more challenging side of legislative drafting: working with a legislator to develop from scratch a legally sound and workable legislative solution to a real life problem. It is outside the scope of a drafting manual to develop those general legal skills a lawyer is supposed to have developed in law school, and it is beyond the powers of the authors of this manual to tell the would-be drafter how to acquire the creativity and common sense this part of the task requires.

In spite of these shortcomings, this manual is useful as a training aid for new drafters, as a reference for experienced drafters, and as a resource for nondrafters who wish to understand more about drafts and the drafting process.

This manual is arranged in chapters, the next five of which deal with legislative documents. Chapter 2 gives an overview of legislative documents and explains generally the function of each type. Chapters 3 through 6 discuss in detail the drafting of each particular type of document and point out relevant constitutional requirements. Chapter 7, “Style and Usage,” concerns itself with rules of composition, including rules of punctuation, capitalization, and English usage, all of which promote consistency and readability in legislative documents. The concluding chapter, “Other Things a Drafter Ought to Know,” offers information and advice about both formal and substantive difficulties drafters often face. Finally, the appendixes contain useful information, including population summaries, the Code Construction Act, a bibliography of works about legislative drafting, and other items.

CHAPTER 2
LEGISLATIVE DOCUMENTS AND THEIR FUNCTIONS

SEC. 2.01. WHAT IS A LEGISLATIVE DOCUMENT? "Legislative document" is a term used in this manual to describe a bill, resolution, amendment, or other document prepared to be considered and voted on by at least one house of the legislature or a legislative committee. The next four chapters discuss the drafting of specific types of legislative documents.

SEC. 2.02. BILLS. A bill is the exclusive means by which the legislature may enact, amend, or repeal a statute. The bill is therefore the most commonly used type of legislative document. The drafting of bills is discussed in Chapter 3.

SEC. 2.03. JOINT RESOLUTIONS TO AMEND THE TEXAS CONSTITUTION. An amendment to the Texas Constitution is proposed by passage of a joint resolution, the drafting of which is discussed in Chapter 4.

SEC. 2.04. OTHER RESOLUTIONS. Resolutions are also used to deal with internal legislative matters (including the adoption of rules), take actions relating to amendment of the United States Constitution, grant private parties permission to sue the state, and state the opinion of the legislature or of either house. A resolution that must be passed by both houses is called either a concurrent or a joint resolution. (Joint resolutions are also used for purposes other than proposing amendments to the state constitution.) A resolution to be passed by only one house is called a simple resolution. The drafting of all these types of resolutions is discussed in Chapter 5.

SEC. 2.05. AMENDMENTS, SUBSTITUTES, AND CONFERENCE COMMITTEE REPORTS. These documents are all used in one way or another to change bills or resolutions as they make their way through the legislative process. Amendments are classified as committee or floor amendments. A **committee amendment** is adopted while a bill or resolution is being considered in committee and must be finally adopted by the house or senate when the bill or resolution reaches the floor.

A **committee substitute** for a bill or resolution is a completely new draft adopted by the committee for consideration by the house or senate in place of the original bill or resolution.

An amendment to a bill or resolution offered by a member during floor consideration is called, appropriately, a **floor amendment**.

When a bill or resolution has passed both houses in different forms, the house of origin must decide whether to agree to the changes made by the other house. If the house of origin concurs in those changes, the bill or resolution is considered finally passed. If the houses do not agree, they may vote to send the bill or resolution to a conference committee, which is composed of members of both houses and resolves "matters in disagreement" regarding the document. The **conference committee report** is a complete draft of the bill or resolution and usually represents a compromise. It is submitted to each house for

consideration on an "as is" basis and *is not amendable*. If the conference committee report is adopted by both houses, that version of the bill or resolution is considered finally passed by the legislature.

The drafting of amendments, substitutes, and conference committee reports is discussed in Chapter 6.

CHAPTER 3
BILLS

SEC. 3.01. INTRODUCTION. Section 30, Article III, Texas Constitution, provides that "[n]o law shall be passed, except by bill," making the bill the workhorse of legislative documents. This chapter discusses the principal parts of a bill and the function of each. These parts, and the section of this chapter where each is discussed, are:

- introductory formalities (each of these items *must* be included in every bill):
  - heading (Sec. 3.02)
  - title (also called "caption") (Sec. 3.03)
  - enacting clause (Sec. 3.04)
- general and permanent substantive provisions:
  - short title (Sec. 3.05)
  - statement of policy or purpose (Sec. 3.06)
  - definitions (Sec. 3.07)
  - principal operative provisions (Sec. 3.08)
  - enforcement provisions: criminal, civil, or administrative (Sec. 3.09)
  - amendment of existing law (Sec. 3.10)
  - repealers (Sec. 3.11)
- procedural or other technical provisions (some are of temporary significance):
  - saving clause or other transitional provisions (Sec. 3.12)
  - severability or nonseverability clause (Sec. 3.13)
  - effective date section (Sec. 3.14)

SEC. 3.02. HEADING. The heading of a bill shows the house in which it is introduced, the bill number, and the name of the legislator introducing it (the "author"). The author signs the bill before introducing it, and the bill number is assigned at the time of introduction. Legislative council staff does not indicate on the heading of a completed bill draft whether the bill is a house or senate bill but leaves a blank in which an "H" or "S" may be handwritten as appropriate. This enables the same draft to be used in both houses. The heading of a final draft as it is delivered to the author appears as follows:

By: _____ __.B. No. ____

SEC. 3.03. TITLE OR CAPTION. (a) In general. Just below the heading of each bill is a statement of what the bill is about, appearing in the following form:

A BILL TO BE ENTITLED[1]

AN ACT

relating to the penalty for criminal trespass.

This "title" or "caption" is required for compliance with legislative rules adopted under Sections 35(b) and (c), Article III, Texas Constitution, which provide:

> (b) The rules of procedure of each house shall require that the subject of each bill be expressed in its title in a manner that gives the legislature and the public reasonable notice of that subject. The legislature is solely responsible for determining compliance with the rule.
>
> (c) A law, including a law enacted before the effective date of this subsection, may not be held void on the basis of an insufficient title.

Before Section 35, Article III, was adopted in its current form in 1986, the caption requirement was enforceable by the courts, which could declare void any portion of an act not encompassed in its caption. The requirement is now contained in house and senate rules (for the 80th Legislature, House Rule 8, Section 1, and Senate Rule 7.02), and noncompliance exposes a bill to the raising of a point of order against further consideration in that form.

The caption is meant to give legislators and other interested persons a convenient way to determine what a pending bill is about without having to read the whole text. The caption requirement is designed to prevent the stealthy inclusion of extraneous provisions in a bill in an attempt to avoid legislative or public notice.

Most violations of caption requirements probably result from poor draftsmanship rather than an intent to deceive. When enforced judicially, the caption requirement produced much litigation—more, according to one commentator, "than all other legislative process requirements [of the constitution] combined."[2]

Two factors make caption drafting a less hazardous pursuit than it was before the 70th Legislature. The "punishment" for a bad caption is now meted out, if at all, during the legislative session, when an opportunity to correct the error may still exist. (This may be little consolation to a legislator whose bill is delayed because of a bad caption during the waning days of a session, since the delay itself may kill the bill.) Also, enforcement is now the responsibility of the presiding officers of the house and senate—persons who have much more experience than the courts in reading legislation and who may be expected to attain a greater degree of consistency in caption rulings than the courts.

Still, the possible consequences of a bad caption are too great not to give careful attention to caption drafting. Until the legislature has developed a body of precedents of its own, it is probably wise to continue following the rules developed from case law.

---

[1]The first line of the caption ("a bill to be entitled") is deleted from an enrolled bill (the version finally passed by both houses and sent to the governor).

[2]Braden et al., *The Constitution of the State of Texas: An Annotated and Comparative Analysis,* p. 170.

(b) When to draft the caption. Experience shows that it is best to draft the caption after completing the body of the bill, since the finished draft of a bill often differs greatly from the drafter's original conception. By saving the caption for last, the drafter is better prepared to accurately and succinctly describe the subject of the bill. A prematurely drafted caption may be inaccurate, so it is safer for a drafter to leave blank space where the caption belongs than to draft a tentative caption and risk forgetting to revise it after finishing the body of the bill.

(c) How to express the subject. The fundamental requisite of a caption is that it express the bill's subject. An expression of the subject is nothing more than a statement of what the bill is *about*. This statement usually begins with the words "relating to" and thus is commonly called the "relating-to clause."

It is not uncommon to see captions that state what a bill *does* instead of what it is about. Suppose, for example, that a bill requires state agencies to dispose of their surplus motor vehicles by selling them at public auction. A good description of the subject of this bill would be "relating to the disposition of surplus motor vehicles owned by state agencies." A what-the-bill-does caption, on the other hand, might read "requiring state agencies to sell surplus motor vehicles at public auction."

While either caption would almost certainly comply with legislative caption requirements, and even though the latter version perhaps provides slightly more information, the "what-the-bill-does" caption has a hidden danger. Bills often are amended or completely rewritten as they pass through the legislature, so the text of a bill may bear little resemblance to the introduced version after legislative action. A statement of what a bill is about is more likely to remain accurate than is a statement of what the bill does. Suppose that, in the example just given, the bill were amended to provide for sale of surplus vehicles by sealed bidding instead of by public auction. The statement of what the bill is about would still be accurate, but the statement of what the bill does would not. While there are legislative procedures to revise captions to reflect amendments, those procedures are not foolproof, and drafting a caption that is less likely to need revision because of amendments helps insure against the possible failure of those safeguards. Besides, a caption stating what a bill is about is what the constitution calls for in the first place.

(d) Use of "relating to." It is customary, although not mandatory, to begin the expression of the subject with the words "relating to." The drafter should rarely, if ever, need to depart from this custom. "Relating to" automatically points the caption drafter in the direction of stating what the bill is *about* rather than what the bill *does*.

(e) Degree of specificity. To be a convenient means of learning quickly what a bill is about, the caption must be succinct. Because it is aimed at a broad audience, including not only legislators but the public generally, the caption should be drafted in plain language that avoids technical terms and jargon as much as possible.[1]

How specific a caption should be is a legal judgment that depends on the subject matter of the particular bill. The courts have held that if the caption describes the subject fairly and accurately, it need not itemize the details contained in the bill that are incidental

[1]A hidden danger in using technical terminology in the caption is shown by *Fletcher v. State,* 439 S.W.2d 656 (Tex. 1969). The supreme court invalidated a caption referring to the licensing of polygraph operators because the act also applied to operators of lie detection devices not literally within the technical definition of "polygraph."

to that subject. (But see, in this regard, the discussion of criminal penalties in the following subsection.) As a rule, the subject of an "omnibus" bill containing diverse provisions centering on a general, unifying theme must be defined more broadly than the subject of a bill with a narrow focus.

Consider, for example, one bill that changes 30 different permit and license fees collected by the Texas Alcoholic Beverage Commission and a second bill that merely affects the amount charged for a winery permit. Acceptable descriptions of the two bills would be, respectively, "relating to certain alcoholic beverage permit and license fees" and "relating to the fee for a winery permit."

An overly specific caption disserves the notice function. The caption reader needs to be given a brief, but fair, notice of what the bill is about. If the reader is interested in detail, he or she can read the text. A caption too specific is also dangerous because, like a "what-the-bill-does" caption, it is more likely than a general caption to become obsolete in the course of the legislative process. Also, a caption that gives much detail is more likely to be found misleading because it omits some detail.

How general is *too* general? Obviously, a caption is too general if it fails to give fair notice of the subject. Beyond this, it is difficult to state a precise guideline, though an example may be useful. Assume that a bill requires state agencies to dispose of their surplus motor vehicles by selling them at public auction. Assume further that the bill requires each agency to publish a newspaper notice of any auction at least 20 days in advance, allows the agency to set a minimum price for each vehicle, requires purchasers to pay cash, and provides for the disposition of the proceeds. Some possible relating-to clauses, in ascending order of specificity, are:

> (1) relating to state agencies;
>
> (2) relating to surplus motor vehicles owned by state agencies;
>
> (3) relating to the disposition of surplus motor vehicles owned by state agencies;
>
> (4) relating to the sale at public auction of surplus motor vehicles owned by state agencies; and
>
> (5) relating to the sale at public auction of surplus motor vehicles owned by state agencies, the publication of notice of the auctions, the right of an agency to set a minimum price, the manner of payment, and the disposition of the proceeds.

The first example is obviously uninformative, and it is probably defective under legislative caption rules. The second, while probably legally sufficient, fails to convey the idea that the bill is about *disposing* of the surplus vehicles. The third example is the best one because it expresses clearly and concisely the essence of the bill. The fourth example is too specific:

it would not accommodate, for example, an amendment to substitute sealed bidding for public auction. The fifth example has the defects of the fourth writ large: it is an "index caption,"[1] a thing to avoid.

Index captions were involved disproportionately in caption litigation chiefly because they are naturally susceptible to appearing deceptive through a failure to include one detail that is of equal stature with others that are listed. They are difficult to draft because, once details are mentioned, it is hard to know when to stop. They also are difficult to defend as meeting the requirements of caption rules because they camouflage the expression of the subject with needless detail. Some index captions go beyond camouflaging a bill's subject. An index caption that recites with specificity the contents of each bill section may never express a coherent or unified subject at all and instead be a pure example of the "forest" being obfuscated by the "trees." The best caption is one that briefly and accurately expresses what the constitution requires, and that is the subject of the bill.

(f) Criminal penalties. A bill that simply creates a new offense presents little difficulty. No specific mention of penalties is needed if the caption clearly indicates that a criminal offense is created: the prescribing of a penalty is necessarily implied by reference to the creation of an offense.

Complications arise when existing penal laws are amended by changing the elements or punishments, or both, of existing offenses, or by creating additional offenses. Care must be taken to avoid drafting a caption that misleads the reader into thinking that the bill affects only elements of the offense when it also revises the punishment structure, or vice versa.[2] Furthermore, when the caption rule of Section 35, Article III, Texas Constitution, was enforceable by the courts, the court of criminal appeals held that a caption that indicates that a new offense is added to a law but does not mention punishment for the offense is sufficient if the new offense is covered by the preexisting general penalty of the law, but not if a harsher penalty is prescribed.[3] In that instance, the caption (an index caption) stated that the bill added to the Uniform Act Regulating Traffic on Highways a section on fleeing a peace officer. The offense carried a specific penalty, harsher than the $200 maximum fine already prescribed by the general penalty provision of that act. The caption failed to mention the special penalty although it specifically referred to another penalty change in the bill (for reckless driving). The court held that the creation of the new offense was valid, but that the special penalty was outside the scope of the caption and therefore void. As a result, the new offense of fleeing a peace officer was made punishable by the preexisting general penalty.

The chief rule, which applies to captions generally, is to *avoid a misleading statement of the subject.* If both elements of the offense and penalties for a violation are addressed by a bill, the caption should indicate this. For example: "relating to the definition of and punishment for rape."

---

[1]For a monstrous specimen of an index caption, see Chapter 184, Acts of the 47th Legislature, Regular Session, 1941. Over five pages of very fine print are required to reproduce this caption in the session law volumes.

[2]See *White v. State,* 440 S.W.2d 660 (Tex. Crim. App. 1969). The caption of a revision of the drug laws was held defective because, although it mentioned the addition of "LSD" and other substances to the list of dangerous drugs, it gave no indication that existing punishment provisions were changed.

[3]*Stein v. State,* 515 S.W.2d 104 (Tex. Crim. App. 1974); *Harvey v. State,* 515 S.W.2d 108 (Tex. Crim. App. 1974).

(g) Council drafting convention. In addition to or as part of expressing the bill's subject, the legislative council staff has adopted a drafting convention of giving notice of the following in the caption:

- the imposition of civil, administrative, or criminal penalties
- the imposition or authorization of a tax or changes affecting an existing tax or taxing authority
- the making of an appropriation
- the granting of authority to issue a bond or other similar obligation or to create public debt
- the granting of the power of eminent domain

In many cases, the notice may be as simple as adding "; making an appropriation" or "; providing criminal penalties" to the caption. In other cases, the notice may be given as part of the general description of the bill's subject. A caption is sufficient for these purposes, regardless of form, if clear notice of the listed issues is given in the caption.

SEC. 3.04. ENACTING CLAUSE. The enacting clause is required by Section 29, Article III, Texas Constitution, and is indispensable. The enacting clause must be in exactly the following words:

```
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
```

A document without an enacting clause is not a bill, and under house precedents it may not be amended for the purpose of inserting an enacting clause and may not be referred to committee.

SEC. 3.05. SHORT TITLE. (a) Purpose of short title. A short title is used to supply a convenient way of citing a cohesive body of law that deals comprehensively with a subject. Short titles may be appropriate for major acts but should *not* be used to make otherwise routine bills look important. Draft a short title section in this form:

```
   SECTION 1. SHORT TITLE.  This Act may be cited as the
Medical Practice Act.
```

(b) Practices to avoid. It is generally wise to avoid:

- including "the" as the first word of a short title[1]
- using "Texas" in a short title—it is superfluous
- using a short title for a chapter or other part of an enacted code or other statute that itself already has a short title
- using a short title for a purely amendatory act
- using a year in a short title

[1]This, in effect, means not capitalizing "the" immediately before the short title ("the Medical Practice Act" rather than "The Medical Practice Act").

SEC. 3.06. STATEMENT OF POLICY OR PURPOSE. Statements of policy or purpose are rarely needed and generally *should be avoided*. This kind of provision may be useful, however, when a substantial body of new law is introduced. See, for example, Section 1.02, Penal Code.

A purpose clause also may be helpful in a short bill if the operative provisions do not clearly indicate what the bill is intended to accomplish. If, for example, a statute dealing with the theft of apples is repealed in order for the theft of apples to be covered by the general theft laws, the repealing act may be misinterpreted, at least by legislators and the public if not by the courts, as legalizing the theft of apples. A purpose section such as the following may be useful:

> SECTION 1. PURPOSE. The purpose of this Act is to eliminate the special offense of theft of apples so that the general statutes dealing with theft may apply to that conduct.

As is the case with short titles, purpose or policy statements should not be used to make routine acts appear important.

A more serious misuse of purpose or policy statements is their use in an attempt to compensate for careless drafting, to state, in effect, that "this Act may not say very clearly what it really means. What it is trying to say is . . . ." A purpose clause should not be put to such a use; it probably will not have the intended effect anyway.

SEC. 3.07. DEFINITIONS. (a) In general. A definitions section in a bill may define only one or two words or many. It can be very useful in making a bill precise, but if great care is not used, a definition may cause rather than eliminate confusion. One of the greatest abuses of definitions is their overuse. There is no need to define a term if, in the context in which the term appears, the meaning is clear without a definition.

(b) "Means" and "includes." A definition may be all-inclusive, in which the word "means" equates the terms on either side. For example:

> (4) "Alcoholic beverage" means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

There are occasions when a term is generally unambiguous and in no need of definition except for one application that might be doubtful. In such a case, the ambiguity may be eliminated by use of a definition in which "includes" or "does not include" is substituted for "means." For example:

> (4) "Oath" includes an affirmation.

OR

> (2) "Tax" does not include a special assessment for public improvements.

Note that "means" and "includes" are not interchangeable, and the former term should be used only for a general definition while the latter should be used only for a specific clarification of meaning. The two words should not be used in tandem as if they were equivalent ("means and includes"). However, it is permissible to attach an "includes" or "does not include" statement at the end of a general definition. For example:

> (1) "Act" means a bodily movement, whether voluntary or involuntary, and includes speech.

Sections 311.005(13) and 312.011(19), Government Code, which provide rules of statutory construction for codes and other statutes, respectively, specifically define "includes" and "including" as used in drafting:

> "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

These rules of statutory construction make it unnecessary for a drafter to use the phrase "includes but is not limited to" in composing a definition.

(c) Use of definition to avoid repetition. In addition to clarifying the meaning of a term, a definition may be useful in avoiding the repetition of long terms, as in the following example:

> SECTION 1. DEFINITION. In this Act, "department" means the Texas Department of Transportation.

On the other hand, if a term such as the one defined in this example is used only a few times in a fairly short bill or code chapter, it may be equally precise and more readable to omit the definition and simply refer to the agency as the Texas Department of Transportation in the first instance and thereafter as the department. Definitions should be used only when they promote precision and readability.

(d) Artificial definitions. A word should never be given a strained or artificial meaning out of keeping with its ordinary usage. (An exception to this rule is "person." See Subsection (h).) A drafter may be tempted to violate this rule when it is necessary to extend the coverage of an existing bill or act and time is too short (or the drafter is too lazy) to revise each affected provision appropriately. An amendment such as the following may result:

> Sec. 1. DEFINITION. In this Act, "statewide elected officer" means the holder of an office filled by an election at which all qualified voters in the state are eligible to vote, including a person appointed to fill a vacancy in such an office, and including a member of the governing body of a municipality with a population of more than 500,000.

This is ludicrous; a municipal officer obviously is not a statewide officer. Although this amendment would probably achieve the desired substantive effect, even the stringent time limitations imposed by a legislative session do not excuse such sloppiness. If time pressure requires a relaxation of standards, it is preferable to insert a section such as the following:

```
   Sec. 1A. LOCAL OFFICIALS.  Each provision of this Act
that applies to a statewide elected officer also applies
to a member of the governing body of an incorporated
municipality with a population of more than 500,000.
```

(e) Substantive law as definition. Do not state an operative provision of law in the form of a definition. This hides the provision and perverts the use to which definitions should be put. For example, *DO NOT WRITE:*

```
   SECTION 1. DEFINITION.  In this Act, "qualified
person" means a person who:

         (1) is at least 18 years old;

         (2) has graduated from an accredited school of
dancing masters; and

         (3) has successfully completed an approved
dancing master apprenticeship program.
```

"Qualified person" usually does not denote a person with any particular qualifications. The definition makes that denotation, and so misuses the phrase. The example is not a definition, but a substantive rule of law, and should be treated as such. The following would be preferable:

```
   SECTION 3. QUALIFICATIONS FOR EXAM.  To qualify to
take the dancing master examination, a person must:

         (1) be at least 18 years old;

         (2) have graduated from an accredited school of
dancing masters; and

         (3) have successfully completed an approved
dancing master apprenticeship program.
```

(f) Location of definitions. If a definition applies to only one section or part of a law, it is generally better to put the definition with the part of the law to which it applies. For example:

```
   Sec. 35.001. DEFINITION.  In this chapter, "recording
officer" means . . . .
```

A definition is usually placed at the beginning of the part of law to which it applies.

(g) Effect of existing definitions. When amending a statute, the drafter must take into account existing definitions that will apply automatically to added provisions. The obvious source of existing definitions is the statute being amended, but other sources may exist. Definitions in the Code Construction Act (Chapter 311, Government Code) apply to all the codes enacted as part of the legislature's statutory revision program, each of which also contains additional definitions. Definitions in Chapter 312, Government Code, apply to civil statutes generally, although definitions in the Code Construction Act prevail in applicable circumstances to the extent of any conflict. Definitions in Section 1.07, Penal Code, are among several provisions of that code that apply not only within the code itself but to penal laws generally. (See Section 1.03(b), Penal Code.)

(h) "Person." It is often desirable to define "person" broadly, such as "an individual, corporation, or association."[1] Although this violates the rule against giving a word an artificial meaning, the advantage of avoiding unnecessary repetition and the long-standing practice of so defining this word outweigh the policy behind the rule. Section 1.07 of the Penal Code defines "person" in this way and, as already noted, Penal Code definitions also apply to penal laws outside the code. While it is legally unnecessary to redefine "person" in a penal law outside the code (except to provide a different definition), the express adoption of that definition (see the following subsection) may be helpful to alert users of the statutes who may be unaware of the general application of Penal Code definitions. The definition of "person" in Section 311.005, Government Code, applies to those codes to which the Code Construction Act applies and that do not otherwise define the term.

(i) Adoption of definition by reference. When it is desired that a term have the same meaning when used in separate but related laws, it may be useful to include a definition in the second law that adopts by reference the definition in the first law. For example:

> Sec. 21.151. DEFINITION. In this subchapter, "teacher" has the meaning assigned by Section 21.101.

The incorporation by reference of a statute sometimes raises a question of whether the legislature intends for the incorporation to include future amendments of that statute or merely means to refer to the incorporated text as it exists on the date of incorporation. The question is answered by Sections 311.027 and 312.008, Government Code, both of which provide that a reference to a statute, rule, or regulation applies to all reenactments, revisions, or amendments of the statute, rule, or regulation unless the opposite is expressly provided otherwise. See Section 8.11 for a more complete discussion of incorporation by reference.

A drafter should use adoption of a definition by reference only when it is desired to maintain parallel meaning and not merely to save words. In the latter circumstance, the future amendment of the adopted definition could produce unforeseen and unfortunate consequences.

(j) Form of definitions section. A definitions section containing a single definition should be in the following form:

> SECTION 1. DEFINITION. In this Act, "motor vehicle" means . . . .

A section containing two or more definitions should be in the following form:

> SECTION 1. DEFINITIONS. In this Act:
>
> (1) "Department" means the Texas Department of Transportation.
>
> (2) "Oath" includes affirmation.
>
> (3) "Vehicle" does not include roller skates.

[1] Note that in some contexts it may also be necessary to define "association" or "corporation" or to exclude municipal corporations.

Note that in the second example each definition is a complete sentence, beginning with a capital letter and ending with a period. Individual definitions are enumerated with Arabic numbers in parentheses. This is an exception to the general rule that requires items in a tabular enumeration to begin with lowercase letters and end with a semicolon. Individual definitions set out as in the example, although resembling nonamendable subdivisions, are actually individually amendable units. (See Section 3.10(e).) They are called subdivisions for citation purposes.

SEC. 3.08. PRINCIPAL OPERATIVE PROVISIONS. (a) Types of provisions. Most statutory provisions may be classified under four major categories:

(1) general provisions, such as short titles, purpose sections, and definitions, which relate primarily to the text of the statute rather than to persons or agencies;

(2) administrative provisions, which relate to the creation, organization, powers, and procedures of the governmental units that enforce or adjudicate the law;

(3) substantive provisions, which give to or impose on a class of persons rights, duties, powers, and privileges; and

(4) enforcement provisions, which provide a particular kind of enforcement that is in addition to the remedial powers of the governmental unit.

The second and third of these categories constitute the principal operative provisions.

Not all bills will have all these types of provisions. Many will contain only one or two of them, relying by implication on the operative provisions of existing law. For example, a bill creating a penal offense will rely on other law to create courts and to empower peace officers to arrest offenders. It is generally best to organize a new law so that the operative provisions appear in the order indicated by this subsection.

(b) Organizing operative provisions. Sorting the operative provisions of a bill into the categories indicated does not complete the task of organization: within each category, individual sections (and even smaller units) should be organized in a logical order to make the proposed statute as readable and easy to use as possible. The following general principles should be followed in organizing any draft:

- Assume that provisions will be read in the order in which they appear. Avoid arranging a bill in such a way that a provision makes no sense until a subsequent provision is read.
- Provisions should appear in the order of their importance, beginning with the most important. General provisions should precede special ones; the general rule should precede an exception.
- To the extent possible, provisions dealing with the same subject should be grouped together.

(c) Headings for parts of bills. After organizing the operative provisions of a bill, a drafter may want to compose captions or “headings” (as they will be called here to avoid confusion with captions of whole bills) to guide readers through the various parts of the bill. A heading is a brief, distinctively typed or printed “sign” designed to disclose the subject of the text that follows. A good set of headings enables a reader to quickly find—or skip over—the various details contained in the bill.

By custom, headings are given to parts of a bill denominated as articles, parts, or sections, but not for smaller units. (In contrast, the style used for the text of this manual provides headings for subsections as well as for sections, chapters, and subchapters.) A heading is typed in all capital letters in an enrolled bill and follows the number of the article, part, or section (e.g., "SECTION 3. DUTY TO PAY TAX.").

Auxiliary verbs, adverbs, adjectives, and the parts of speech known as articles are usually excluded from headings to promote brevity and pithiness. If more than one central idea is expressed in the unit of text that follows the heading, phrases may be linked by semicolons. If several major thoughts are included in the unit of text, the unit probably should be divided.

Headings are only a helpful guide to the relative location of the contents of a bill and do not merit a great amount of concern. Section 311.024, Government Code, stipulates that a heading "does not limit or expand the meaning of a statute." A drafter may dispense with headings altogether, although statute publishers will supply them at the time of publication. When inserting a new section or article into an existing body of law, a drafter should conform to the precedent regarding headings that has been set in the law being amended.[1] It is legislative council policy to provide headings for a bill containing *three or more* sections other than sections amending or repealing existing law or prescribing saving, other transition, or effective date provisions. If headings are used, they should be used for all sections, including those exempted from consideration of *whether* to use them.

SEC. 3.09. ENFORCEMENT PROVISIONS. (a) Introduction. The purpose of the law is to govern conduct. This is often accomplished by announcing a rule, which may be a mandate or prohibition, and prescribing a punishment for noncompliance or a reward for compliance. The announcement of a rule is referred to in this manual as a *substantive provision,* and the prescribing of a consequence is called an *enforcement provision.*

Not every statute neatly segregates substantive provisions from enforcement provisions. A law that provides that "A person who slanders the king shall be hanged" is equivalent to the substantive provision "A person may not slander the king" and the enforcement provision "A person who violates this law shall be hanged." However, it is usually better organization to separate substance and enforcement in all but the simplest statutes. The following discussion focuses on some of the more common types of enforcement provisions: criminal, civil, and administrative.

(b) Criminal enforcement. Before creating a criminal offense, a drafter should first determine whether the conduct sought to be prohibited is already proscribed by state law. Model acts often contain penal provisions that duplicate offenses contained in the Penal Code or other law. Model licensing laws, for example, often prohibit falsifying a license application, although Chapter 37 of the Penal Code, titled "Perjury and Other Falsification," covers this type of conduct. Creating an offense that duplicates an existing one not only wastes legislative effort, but may impliedly repeal or otherwise impair the effectiveness of existing law.

[1]To determine whether the heading of a section or article as printed in a privately published compilation of statutes (such as Vernon's Texas Civil Statutes) was enacted by the legislature or supplied by the publisher, a drafter must check an "official" copy of the most recent enactment of the section or article (e.g., the enrolled bill or the act as printed in the session law volumes, the chronological compilation of laws enacted each legislative session).

Another thing to consider when creating an offense is whether to place the new provision in the Penal Code. The code is generally concerned only with traditional criminal offenses, such as homicide, assault, theft, and bribery. To preserve this arrangement, a drafter should not include in the code an offense that, based on its subject matter, could logically be placed in another code or statute.

Competent drafting of a penal provision requires at least a working knowledge of substantive criminal law and, particularly, familiarity with the Penal Code. The Penal Code was enacted in 1973 as the culmination of a comprehensive study by the State Bar Committee on Revision of the Penal Code. The code was significantly revised in 1993 following another comprehensive study, this one by the Texas Punishment Standards Commission. A significant part of the revision consisted of repealing offenses that duplicated other offenses in the Penal Code or other law and repealing offenses that were not traditional criminal offenses. Drafting assistance was provided by the legislative council in both 1973 and 1993. The code is, on the whole, well organized and well drafted. Not only is it a useful drafting model, but Titles 1–3 contain general provisions that apply to criminal laws outside the code.[1] *Knowledge of the contents of these titles is an absolute prerequisite to the drafting of a penal offense.*

Definition of an Offense

The preferred format for defining a criminal offense is that used by the Penal Code. To explain that format and at the same time raise some of the key drafting issues related to creation of an offense, Section 37.02 of the Penal Code, concerning perjury, is used here as an example. Each phrase is discussed in turn, and the purpose it serves and the general provisions of the code that relate to it are pointed out. Without exception, the code provisions cited in this discussion are included in the first three titles of the Penal Code and therefore apply to penal laws outside the code.

Section 37.02, Penal Code, reads:

> Sec. 37.02. PERJURY. (a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:
>
> (1) he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath; or
>
> (2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.
>
> (b) An offense under this section is a Class A misdemeanor.

The phrase-by-phrase discussion of Section 37.02 follows:

1. "A person . . . ." "Person" is defined by Section 1.07(a)(38) of the code to mean "an individual, corporation, or association"; each of those entities is also defined

[1]Section 1.03(b), Penal Code, states: "The provisions of Titles 1, 2, and 3 apply to offenses defined by other laws, unless the statute defining the offense provides otherwise; however, the punishment affixed to an offense defined outside this code shall be applicable unless the punishment is classified in accordance with this code."

by Section 1.07. The current Penal Code, unlike earlier law, provides in detail in Sections 7.21–7.24 and 12.51 for the criminal punishment of corporations and associations as well as for the criminal responsibility of individuals who act for them. The drafter must use the terms "person," "individual," "association," and "corporation" carefully to reach the precise class of potential violators intended to be covered.

Although the Penal Code generally says that "a person commits an offense if *he*" does so-and-so, because of the legislative council's policy concerning the use of masculine personal pronouns, "a person commits an offense if *the person* . . ." is now preferred.[1]

2. "`. . . commits an offense . . . .`" This phrase signals clearly the creation of a criminal offense as opposed to establishment of a mere civil rule of conduct. For that reason, this formulation is preferred, for criminal law purposes, to "a person may not . . .", "it is unlawful . . .", or something of the like.

3. "`. . . if, with intent to deceive and with knowledge of the statement's meaning . . . .`" "Intent" and "knowledge" establish necessary culpable mental states the actor must possess to commit the offense. Chapter 6 of the Penal Code addresses the issue of culpability. Section 6.03 defines four culpable mental states: intent, knowledge, recklessness, and criminal negligence. These definitions bear careful scrutiny. A close reading of Section 6.03 will show that although the four mental states are ranked according to seriousness, they are not precisely parallel and do not describe four degrees of intensity of a single phenomenon. Intent, for example, has to do with the actor's attitude toward the nature or result of his conduct, while recklessness concerns his awareness of circumstances surrounding his conduct and his awareness of attendant risks. These culpable mental states are not semantically interchangeable.

A reference to a culpable mental state should be so placed in the definition of the offense that there is no question about what element it applies to. Section 37.02 requires that *intent* be directed toward the specific result "to deceive," and that *knowledge* be about "the statement's meaning," a circumstance surrounding the actor's conduct. The words describing these culpable mental states occur immediately before the result or circumstance they relate to; there is no doubt about what the terms modify. Compare this with the following example:

> SECTION 14. A person commits an offense if the person knowingly sells a cigarette to a minor.

In the preceding example, "knowingly" literally modifies "sells." If knowledge of the age of the buyer, rather than knowledge that the actor was selling, is meant to be required, the following formulation should be used:

> SECTION 14. A person commits an offense if the person sells a cigarette to an individual the person knows to be a minor.

4. "`. . .`

> "(1) he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath; or

[1]The legislative council policy about the use of masculine terms in drafting appears in Section 7.26 of this manual.

"(2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code."

This part of Section 37.02 states the essence of the crime and, in combination with the description of culpability, constitutes the elements of the offense. Federal and state constitutional requirements of due process require that the proscribed conduct be defined with sufficient certainty to give reasonable notice of what conduct is prohibited.

5. "(b) An offense under this section is a Class A misdemeanor." Chapter 12 of the code establishes eight standard punishments: three classes of misdemeanor (Classes A, B, and C) and five classes of felony (capital; first, second, and third degree; and state jail felonies). Section 12.01 enunciates as state policy that "Penal laws enacted after the effective date of this code shall be classified for punishment purposes in accordance with this chapter." Drafters are encouraged to adhere to this policy to preserve the logical classification scheme established by the code and to ensure that criminal laws outside the code dovetail with various general provisions of the code and the Code of Criminal Procedure that refer to these classifications. In accordance with the 1993 revision of the Penal Code, a defendant convicted of a misdemeanor is *confined* in jail, a defendant convicted of a felony is *imprisoned* in the institutional division, and a defendant convicted of a state jail felony is *confined* in state jail.

It is generally beyond the purpose of this manual to address the substantive issue of appropriate punishment for crimes. A drafter who must advise a legislator concerning the choice of punishment for an offense will often find it helpful to find a Penal Code offense of approximately equal seriousness to follow in suggesting a corresponding punishment.

Exceptions and Defenses

Chapter 2 of the Penal Code, titled "Burden of Proof," distinguishes between exceptions, defenses, and affirmative defenses.[1]

Although these three types of defensive provisions all serve to exclude from criminal responsibility conduct that would otherwise be included within the definition of an offense, they differ significantly regarding burden of proof.

An **exception** is, in effect, a negative element of the offense; its nonexistence must be alleged in the indictment or information and proved by the prosecution beyond a reasonable doubt. Exceptions are introduced in the Penal Code (and should be introduced in outside laws) by the phrase "It is an exception to the application of . . . ."

A **defense**, introduced by "It is a defense to prosecution," need not be negated in an indictment or information, and the question of its existence is not submitted to the jury unless evidence of its existence is introduced at the trial. When the issue is submitted, the jury is instructed to acquit the defendant if there is a reasonable doubt on the issue.

An **affirmative defense**, introduced by "It is an affirmative defense to prosecution," differs from a defense only as to the burden of proof; the defendant has the burden of establishing an affirmative defense by a preponderance of the evidence.

[1]Chapter 2 applies to criminal laws outside the Penal Code; see Section 1.03(b) of the code.

General Penalty

A general penalty is a provision, usually in a rather long and comprehensive act, substantially as follows:

> SECTION 21. PENALTY. (a) A person who violates this Act commits an offense.
>
> (b) An offense under this section is a Class C misdemeanor.

Use of the general penalty is strongly discouraged. Because it typically defines an offense simply as "a violation of this Act," the provision is inherently vague and likely overbroad. It literally seems to criminalize every possible deviation from the terms of the law in which it appears, including such conduct as the filing of a report one day late or filing two instead of three copies of a license application. To put it bluntly, a general penalty is a shot in the dark: one is not sure what it might hit. An additional problem with such a provision is that it ignores most of the key issues, such as culpability, criminal responsibility of corporations or associations, and rationally graded punishment, that ought to be considered when an offense is created.

Enhancements Based on Criminal History

An enhancement is an increase, because of the circumstances of the offense or because of the criminal history of the defendant, to the punishment otherwise applicable to an offense. Sections 12.42 and 12.43, Penal Code, provide general enhancements for repeat and habitual felony offenders. Those sections generally apply to offenses outside the Penal Code, absent a specific statement in the offense or the law in which the offense is contained that those sections do not apply. Consequently, a drafter requested to create an internal enhancement, that is, one that is specific to a particular offense, should first determine whether the desired increase in punishment is different from that provided by Section 12.42 or 12.43. If the drafter supplies an enhanced punishment that differs from either section, the punishment provided by the drafter will prevail. See Section 12.43(d), Penal Code.

If a drafter determines that an internal enhancement is appropriate, the drafter should use the terminology present in Sections 12.42 and 12.43, Penal Code. Those sections increase punishment "if it is shown on the trial of [an offense] that the defendant has . . . been convicted." Requiring a "showing at trial" of a previous conviction properly requires the prosecution to allege the previous conviction in the information or indictment and to prove the existence of the conviction beyond a reasonable doubt. An example of an internal enhancement is as follows:

> (b) An offense under this section is a felony of the third degree unless it is shown on the trial of the offense that the defendant has previously been convicted under this section, in which event the offense is a felony of the first degree.

(c) Civil penalties. A civil penalty is an enforcement mechanism by which a wrongdoer is made civilly liable to the state or a political subdivision for an amount of money. Although

the penalty resembles a fine, the fact that it is civil rather than criminal obviates the strict burden of proof required to establish criminal responsibility. The state or political subdivision files a civil action against the wrongdoer and need only show by a preponderance of the evidence that the prohibited conduct was committed.

Because the remedy is civil, the attorney general, instead of the local prosecuting attorney, may be authorized to prosecute the action on behalf of the state. Although Section 21, Article V, Texas Constitution, might seem to make representation of the state in a state trial court the prerogative of county and district attorneys, courts have approved laws providing for representation by the attorney general in legislatively created causes of action.[1]

Because the civil penalty has many attributes of criminal punishment without the corresponding procedural protections, some persons have questioned the propriety of the remedy. In spite of this, the civil penalty is well established in Texas law, its popularity largely due, no doubt, to the features that some find objectionable.

A civil penalty is typically provided for as follows:

> Sec. 35.034. CIVIL PENALTY. (a) A license holder who fails to file the report required by Section 35.033 within the time specified by that section is liable to the state for a civil penalty of $1,000 for each day the failure continues.
>
> (b) The attorney general may sue to collect the penalty.

(d) Private enforcement. The creation or extinguishment of civil liability between private parties may be used to create an enforcement mechanism that requires no governmental intervention other than the ordinary operation of the judicial process.

In cases in which liability already exists but is seldom enforced, enforcement may be made more attractive by such means as enhancing the measure of damages, creating favorable presumptions, authorizing extraordinary remedies (see the following subsection on injunctions), or providing for the award of attorney's fees.

Creation of Liability

A provision creating a cause of action is usually relatively uncomplicated and consists of a description of the conduct creating liability, a statement of the remedy, and, in some cases, treatment of defenses or evidentiary rules. For example:

> Sec. 44.032. CIVIL LIABILITY. (a) A landlord who causes the interruption of utility service to a tenant in violation of this subchapter is liable to the tenant for damages equal to the daily equivalent of the tenant's rent for each day or part of a day on which service is interrupted. A tenant who prevails in an action brought under this section is also entitled to recover court costs and reasonable attorney's fees.

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[1]See *State v. Walker-Texas Investment Co.,* 325 S.W.2d 209 (Tex. Civ. App.—San Antonio), *writ ref'd n.r.e. per curiam,* 328 S.W.2d 294 (1959).

(b) It is a defense to an action brought under this section that on the date the interruption of service began the tenant was at least 30 days delinquent in the payment of rent.

(c) In an action brought under this section it is presumed that a landlord caused an interruption of utility service if the utility service is provided to the rental unit through a central distribution point under the landlord's control.

Extinguishment of Liability

Sometimes the harm sought to be remedied is the existence of liability the legislature considers to be contrary to the public interest. By extinguishing this liability and thereby denying the use of the courts to enforce it, an enforcement mechanism is created that requires no governmental action at all. The extinguishment of liability currently in existence raises the issues of unconstitutional retroactivity and impairment of contract.[1] This is not to say that *any* law having this effect is unconstitutional; abolition of existing liability has been upheld when done to protect the public health or safety or when enforcement of the abolished liability was contrary to public policy.[2] Of course, these issues are irrelevant to a law that applies only prospectively.

A law that partially invalidates private agreements in order to protect public safety is Section 5.025, Property Code, which reads:

> Sec. 5.025. WOOD SHINGLE ROOF. To the extent that a deed restriction applicable to a structure on residential property requires the use of a wood shingle roof, the restriction is void.

(e) Injunctive relief. Injunctions are governed by Chapter 65, Civil Practice and Remedies Code, and Rules 680–693a of the Texas Rules of Civil Procedure. Chapter 65 provides that a district or county court may issue an injunction in several circumstances, including where "the applicant is entitled to a writ of injunction under the . . . statutes of this state relating to injunctions."

All that is required to make the remedy available is to describe the circumstances under which the writ is available and who has standing to seek it. For example:

Sec. 57.064. INJUNCTIVE RELIEF. An owner or occupant of a residential structure that is being damaged or is in danger of being damaged by a violation or threatened violation of this subchapter is entitled to appropriate injunctive relief to prevent the violation from continuing or occurring.

(f) Administrative penalties. An administrative penalty is an enforcement device similar in some respects to a civil penalty. In fact, some persons characterize the administrative penalty as a type of civil penalty, although others consider it to be a separate

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[1]See Section 16, Article I, Texas Constitution, and Section 10, Article I, U.S. Constitution.

[2]The decision in *Manigault v. Springs,* 199 U.S. 473 (1905), cites eight cases in which the U.S. Supreme Court had approved extinguishment of liability before the date of that decision.

type of penalty. The administrative penalty is similar to the civil penalty discussed earlier in that it resembles a fine and in that the prohibited conduct must be proved only by a preponderance of the evidence instead of by the stricter burden of proof that applies to criminal cases.

The major differences between an administrative penalty and the civil penalty discussed earlier relate to the entity that assesses the penalty and to the assessment procedure. A court assesses a civil penalty, while an administrative agency assesses an administrative penalty.

Two examples of an administrative penalty are provided below. The first example is a short version that relies on the administrative procedure law, Chapter 2001, Government Code, to supply most of the procedures for imposing the administrative penalty. The second example is a longer version that includes many details for imposing the administrative penalty that differ from the procedures prescribed by the administrative procedure law. The drafter should consider, in each case in which an administrative penalty is to be established, whether those details are beneficial or whether the short version is adequate.

In each version of the administrative penalty, parts of the penalty need to be tailored to the needs of the specific agency. Parenthetical comments are included within each version to alert the drafter to those parts.

A short version of an administrative penalty, which is drafted here as a section in a code, is:

> Sec. 100.101. ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. *(COMMENT: The description of the person on whom a penalty may be imposed should be tailored to each specific agency.)*
>
> (b) The amount of the penalty may not exceed $5,000, and each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty. *(COMMENT: The maximum amount of the penalty should be tailored to each specific agency.)* The amount shall be based on:
>
> (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
>
> (2) the economic harm to property or the environment caused by the violation;
>
> (3) the history of previous violations;
>
> (4) the amount necessary to deter a future violation;
>
> (5) efforts to correct the violation; and
>
> (6) any other matter that justice may require. *(COMMENT: These factors, especially item (2), should be tailored to each specific agency.)*

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the board to contest the affidavit as provided by those rules.

(d) The attorney general may sue to collect the penalty.
(COMMENT: It is probably not essential for this provision to be included because Section 2001.202, Government Code, and Chapter 2107, Government Code, adequately treat the attorney general's authority to sue to collect the penalty. However, this provision is included to be consistent with many of the other administrative penalty provisions found in state law.)

(COMMENT: As a general rule, Section 404.094(b), Government Code, requires money received by a state agency to be deposited in the general revenue fund. As a result, there is no need to require expressly that an administrative penalty be deposited in the general revenue fund. However, a few agencies still have special funds in which an administrative penalty, as well as some other revenue, would be deposited. If the drafter wants to supersede those special fund provisions and place the administrative penalty in the general revenue fund, the drafter will need to add an additional sentence at the end of Subsection (d) that reads: "A penalty collected under this section shall be deposited in the state treasury in the general revenue fund.")

(e) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

A longer version of an administrative penalty, which is drafted here as a subchapter in a code, is:

SUBCHAPTER E. ADMINISTRATIVE PENALTY

Sec. 100.101. IMPOSITION OF PENALTY. The board may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter. *(COMMENT: The description of the person on whom a penalty may be imposed should be tailored to each specific agency.)*

Sec. 100.102. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed $5,000, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. *(COMMENT: The maximum amount of the penalty should be tailored to each specific agency.)*

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require. *(COMMENT: These factors, especially item (2), should be tailored to each specific agency.)*

Sec. 100.103. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) If the executive director determines that a violation occurred, the director may issue to the board a report stating:

(1) the facts on which the determination is based; and

(2) the director's recommendation on the imposition of the penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person.

(c) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 100.104. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 20 days after the date the person receives the notice, the person in writing may:

(1) accept the determination and recommended penalty of the executive director; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the executive director, the board by order shall approve the determination and impose the recommended penalty.

Sec. 100.105. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give written notice of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall hold the hearing. *(COMMENT: Several of the larger agencies employ hearings officers to conduct contested case hearings. For those agencies, it is probably more appropriate to allow the governing board of the agency to designate a hearings officer to conduct the hearing. For those agencies, the following sentence should be added in place of the second sentence in Subsection (a): "The board may employ a hearings officer to hold the hearing." Also, the reference to "administrative law judge" in Subsection (b) should be changed to "hearings officer.")*

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Sec. 100.106. DECISION BY BOARD. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(b) The notice of the board's order given to the person must include a statement of the right of the person to judicial review of the order.

Sec. 100.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date the board's order becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

Sec. 100.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 100.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(b) If the executive director receives a copy of an affidavit under Subsection (a)(2), the director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 100.109. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty. *(COMMENT: It is probably not essential for this provision to be included because Section 2001.202, Government Code, and Chapter 2107, Government Code, adequately*

treat the attorney general's authority to sue to collect the penalty. However, this provision is included to be consistent with many of the other administrative penalty provisions found in state law.)

(COMMENT: As a general rule, Section 404.094(b), Government Code, requires money received by a state agency to be deposited in the general revenue fund. As a result, there is no need to require expressly that an administrative penalty be deposited in the general revenue fund. However, a few agencies still have special funds in which an administrative penalty, as well as some other revenue, would be deposited. If the drafter wants to supersede those special fund provisions and place the administrative penalty in the general revenue fund, the drafter will need to add an additional subsection to Section 100.109 to read as follows:

(c) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.)

Sec. 100.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Sec. 100.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 100.112. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

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   Sec. 100.113. ADMINISTRATIVE PROCEDURE.  A proceeding
to impose the penalty is considered to be a contested
case under Chapter 2001, Government Code.
```

SEC. 3.10. AMENDMENT OF EXISTING LAW. (a) In general. Each enacted bill affects, by addition, deletion, or other alteration, the cumulative body of existing state law and is in that limited sense an amendment of existing law. However, a bill that *directly* amends an existing statute or code or other official compilation of statutes is subject to specific rules of form that do not apply to bills that affect existing statutes only by implication.

(b) When to amend. To structure a bill to accomplish its intended purpose, a drafter must be familiar with any existing law that covers the subject matter of the proposed bill. Law that exists on the same subject will largely determine the details the drafter must include and the policy decisions the requestor must make, so the bill, if enacted, can be integrated smoothly into the larger body of law. For these reasons, it is usually advisable to determine early in the process of preparing a bill the nature and extent of law existing on the same subject.

A central decision in this process is whether to amend directly any existing law on the subject. There are no exact standards for deciding whether to amend existing law, but the following principles are generally useful:

- If the proposed bill needs the existing law to supply much of its meaning, or if the proposal would provide an important change in the operation of the existing law, a direct amendment of the existing law is probably advisable.
- If the effect of the proposal on existing law, or vice versa, is collateral to the major purpose of the bill, a "conforming" amendment to existing law, describing how the two independent laws can be harmonized, may be in order.
- If the proposed bill is a complete substitute for the existing law, the drafter will probably want to repeal, rather than amend, the existing law.[1]
- If the proposed bill would create a comprehensive exception to existing law (as local laws often do relative to general laws), two independent laws may be desirable. (A drafter will want to consider a conforming amendment to existing law explaining that one law is an exception to the operation of the other.) An exception to existing law that is not very comprehensive or is simply stated, however, will usually be better placed as a direct amendment of the existing law.
- The chief rule of thumb is to determine where an interested person is most likely to look for the new law: if that is in an existing statute, an amendment is probably a good idea.

Any proposed permanent general law on a subject included in a code enacted as part of the legislature's statutory revision program should be drafted as an amendment to that code, whether or not the law amends an existing statute in the code. If the proposed law cannot reasonably be placed in a code, the drafter should make every effort to add it to the Revised Statutes and assign it a definite number rather than leaving numbering and placement to the discretion of the compilation publisher. In addition, when drafting a new part of a code or the Revised Statutes, the drafter should try to avoid assigning to that new part a number (or letter) already assigned by another bill in the same legislative session.

[1]See Section 3.11 of this manual for a discussion of repeals.

Although duplicate numbering is practically impossible to avoid entirely, improvements in database searching capabilities should help minimize the number of duplicates—and the size of the general code update bill.

(c) Citation of amended statute; language introducing an amendment. The introductory language (or recital) describing the statute being amended should refer to the official citation for that statute. For statutes that have been codified by legislative act and for which the alphabetical or numerical designation as part of a code or the Revised Statutes is provided by legislative act, that designation is the official citation. In general, the designation of articles, sections, and the various subparts of a code are official citations.

Thomson West's *Vernon's Texas Civil Statutes,* which includes the text of most uncodified laws, is an unofficial compilation of statutes based on the 1925 Revised Statutes, which was a bulk revision of all civil statutes at that time. Thomson West has editorially arranged in its publication nonamendatory laws enacted since 1925 and for that purpose has supplied alphabetical and numerical designations of those statutes.

For example, Article 3860 was enacted as part of the 1925 Revised Statutes, and the official citation of it and its subsequent amendments is "Article 3860, Revised Statutes." Similarly, Article 9023d is officially part of the Revised Statutes because the 1997 bill adopting the statute officially added it to the Revised Statutes by stating "Title 132, Revised Statutes, is amended by adding Article 9023d to read as follows:". The proper citation is "Article 9023d, Revised Statutes."

On the other hand, Article 9030 of Vernon's Texas Civil Statutes is an unofficial designation that the publishing company has assigned for the convenience of the users of its publication of Texas statutes. The text of the statute assigned that number is the text of H.B. 1208 from the 74th Legislature. Its official citation is "Chapter 910 (H.B. 1208), Acts of the 74th Legislature, Regular Session, 1995." In the introductory language of an amendatory bill, council drafting convention is to include the Vernon's citation in parentheses following the official citation. For example:

```
   SECTION 5. Section 1, Chapter 910 (H.B. 1208), Acts
of the 74th Legislature, Regular Session, 1995 (Article
9030, Vernon's Texas Civil Statutes), is amended to read
as follows:
```

If the law has a short title, the short title may be substituted for the session citation.

When two or more statutes have the same designation (e.g., the same code section number), they are distinguished in a citation by a reference to the enacting session law. For example, separate bills in the 80th Legislature added two statutes designated as Section 29.095, Education Code. The Section 29.095 that relates to grants for student clubs is cited as "Section 29.095, Education Code, as added by Chapter 1058 (H.B. 2237), Acts of the 80th Legislature, Regular Session, 2007."

On occasion, text that has been amended more than once is printed in multiple versions by the statute publisher.[1] In this situation, there is really only one statute—it is simply being published in two or more versions because the publisher did not reconcile multiple amendments. (This differs from the circumstance described above, in which two or more statutes were given the same designation when they were *added* to the main body of law.) A

[1]See Section 8.08 for more information about resolving conflicts in acts passed during a legislative session.

statute that is printed in multiple versions must be merged into one version, or "reenacted." The introductory language will provide that the statute is "reenacted" or is "reenacted and amended," depending on whether the drafter is only creating a merged statute or is also amending it. Introductory language in the latter instance would read, for example:

> SECTION 2. Section 107.004, Family Code, as amended by Chapters 172 (H.B. 307) and 268 (S.B. 6), Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to read as follows:

The text as set out incorporates without underlining the changes made by both of the acts. If it is necessary to harmonize the versions, the drafter can insert minimal punctuation or connective language (e.g., an "and" between subdivisions) without underlining.

If the versions are so contradictory that they cannot be harmonized, the drafter must determine which of the versions is correct and reenact that version. The introductory language will cite the multiple amendments, but the text as set out will be only the version that is determined to be current law. Underlining and bracketing will show only the substantive amendments made in the bill being drafted.

If a drafter is unsure of the official citation of a statute, the only means of determining the official citation is to review the history of the statute. For that purpose, the drafter should use the history printed in Vernon's Texas Civil Statutes and refer to the session law enacting the statute.

The recodification of laws on a topical basis through the continuing statutory revision program is progressively eliminating the difficulties in discovering and using the official citation of Texas statutes. Although council staff should consistently use the official citation of statutes being amended, other drafters should be aware that use of an unofficial citation does not make a bill legally defective. However, use of unofficial citations invites error and should be scrupulously avoided.

Proper citation form is discussed at greater length in Subchapter C of Chapter 7. The following examples illustrate some ways citations appear in amendatory bill recitals:

> SECTION 1. Section 321.007(a), Government Code, is amended to read as follows:
>
> SECTION 2. Sections 408.121, 408.122, and 408.129, Labor Code, are amended to read as follows:
>
> SECTION 3. Subchapter A, Chapter 22, Education Code, is amended to read as follows:
>
> SECTION 4. Sections 3(a) and (g), Article 42.12, Code of Criminal Procedure, are amended to read as follows:
>
> SECTION 5. Article 6218, Revised Statutes, is amended to read as follows:
>
> SECTION 6. Section 4, Chapter 775 (H.B. 3735), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

SECTION 7. Section 2(c), Chapter 88 (H.B. 1573), Acts of the 77th Legislature, Regular Session, 2001 (Article 6243h, Vernon's Texas Civil Statutes), is amended to read as follows:

SECTION 8. Section 1.03(11), Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), is amended to read as follows:

SECTION 9. Chapter 43, Parks and Wildlife Code, is amended by adding Subchapter W to read as follows:

SECTION 10. Subtitle A, Title 2, Water Code, is amended by adding Chapter 11 to read as follows:

SECTION 11. Subchapter B, Chapter 36, Finance Code, is amended by adding Sections 36.113 and 36.114 to read as follows:

SECTION 12. Section 431.402, Health and Safety Code, is amended by adding Subsections (c) through (h) to read as follows:

SECTION 13. Section 321.207, Tax Code, is amended by amending Subsections (a), (c), and (d) and adding Subsections (e), (f), and (g) to read as follows:

SECTION 14. Section 14.001, Education Code, is amended by adding Subsection (a-1) and amending Subsection (d) to read as follows:

SECTION 15. Section 231.112, Family Code, is transferred to Subchapter B, Chapter 234, Family Code, renumbered as Section 234.106, Family Code, and amended to read as follows:

(d) Amendment by reference (aka blind amendment). Section 36, Article III, Texas Constitution, prohibits amendment by reference (sometimes called "blind amendment"). Amendment by reference is the amendment of existing text by reference to its title or citation, use of directory language, and use of the language added or deleted, as appropriate, without setting out the complete provision as amended. (For example: "substitute '30 days' for '10 days' in the second sentence of Section 2" or "strike the fourth and fifth sentences of Section 1.") An amendment by reference provides little clue to its subject; an interested reader usually must make a careful, line-by-line comparison of the original text with the amendment.

Section 36 applies only to printings of complete bills that are amendatory in form. It does not apply to the form of committee or floor amendments to bills. (For a discussion of permissible forms for committee and floor amendments, see Section 6.03 of this manual.) Section 36 also does not apply to direct or implied repeals,[1] implied amendments,[2]

[1]See *Thompson v. United Gas Corporation,* 190 S.W.2d 504 (Tex. Civ. App.—Austin 1945, writ ref'd), and *State Board of Insurance v. Adams,* 316 S.W.2d 773 (Tex. Civ. App.—Houston 1958, writ ref'd n.r.e.).

[2]See *Popham v. Patterson,* 51 S.W.2d 680 (Tex. 1932).

incorporation by reference,[1] complete substitutes for existing statutes,[2] or recodification acts.[3]

(e) Amendable unit. The constitutional prohibition of blind amendment requires the "section or sections amended" to be "re-enacted and published at length." The temptation to avoid consideration of blind amendment questions by reproducing the text of whole statutes in amendments, unless the changes are dispersed throughout all parts of the statute, should be resisted: it is a waste of time, buries the object of the bill, and often ensures that no one will read it.[4] Authors, drafters, and readers of bills are busy people: all would usually appreciate amendment of the fewest and smallest units that will safely do the job.

An amendatory portion of a bill that contains the text of one or more statutory parts denominated as sections, or something recognized as a larger unit than a section, complies with the publication requirement of the blind amendment prohibition. This is true even if, as in the case of a change of a definition in a statute, the change *impliedly* amends other parts of the statute.[5]

Courts in Texas and other jurisdictions prohibiting blind amendment have expended considerable effort in determining the *minimum* portion of a statute that is required to be reproduced in an amendatory bill. The common test is whether the portion of a statute that is reproduced in an amendment indicates the purpose of the amendment and expresses a complete thought.[6] A complete sentence is obviously a threshold requirement.[7] If the meaning of an amendment is clear from the text reproduced, the amendment probably will be upheld against a constitutional challenge that it is a blind amendment. Courts have not required that an amendment disclose effects that it necessarily has or might have on other laws or other parts of the same law.

In *Ellison v. Texas Liquor Control Board,* 154 S.W.2d 322 at 326 (Tex. Civ. App.—Galveston 1941, writ ref'd), the court upheld reenactments of *sub*sections of a statute, saying "[t]here is no magic in words or designations." Courts elsewhere have agreed that nomenclature is not determinative, permitting reenactment or addition of denominated parts of a section that follow ordinary rules of grammar for development of paragraphs. However, some courts have been reluctant to approve amendatory paragraphs having text that does not begin with a denomination that identifies it as a part of a section or other unit.[8] This result cannot be explained in terms of the expressed judicial standard of review.

A part of a section specifically denominated as a unit of a section, as well as a larger denominated portion of a statute or compilation of statutes, is an amendable unit if it can reasonably be said to meet the standard of clarity based on meaning and purpose. A

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[1]See *Dallas County Levee District No. 2 v. Looney,* 207 S.W. 310 (Tex. 1918).

[2]See *Johnson v. Martin,* 12 S.W. 321 (Tex. 1889).

[3]See Section 43, Article III, Texas Constitution, and *American Indemnity Co. v. City of Austin,* 246 S.W. 1019 (Tex. 1922).

[4]The practice of reproducing the entire text, or large portions, of a statute when only some of the reproduced portions are being amended does not necessarily make the whole statute, or even all of the reproduced portions, available for amendment when the bill is in committee or on the floor. See Section 6.02 of this manual.

[5]See *Nations v. State,* 43 S.W. 396 (Ark. 1897), for a discussion of this point in another state prohibiting blind amendment.

[6]An early case, *Henderson v. City of Galveston,* 114 S.W. 108 (Tex. 1908), rejected such a standard and applied the "section" requirement literally. The case has not been followed in Texas and has been virtually ignored in other jurisdictions.

[7]Common usage allows a single exception to even this basic requirement. Each in a series of definitions, separately denominated and punctuated with a period, is considered an amendable unit although the series is introduced by a phrase such as "In this Act:" or "In this chapter:".

[8]The result in *Henderson v. City of Galveston* can be reconciled with other court decisions on this ground.

drafter in Texas is probably not safe in limiting the reproduced text of an amendment to an undenominated portion of a statute, whether or not its meaning and purpose are clear on the face of the bill.

(f) Relettering and renumbering. The practice of setting out an entire section to add, amend, or repeal one or two subsections creates a number of problems and should be avoided. The same is true for setting out any other large unit, such as a subchapter, and renumbering its smaller units to accommodate the addition or deletion of a smaller unit. Whenever possible, drafters should limit the text of a statute set out for amendment to the least amendable unit (discussed in Subsection (e)). The following guidelines were implemented at the start of the 78th Legislature, and drafters should adhere to them to avoid nonsubstantive relettering and renumbering:

- A drafter should add a new subsection at the end of a section unless there is a substantive reason to insert it elsewhere in the section.
- When adding a subsection between two existing subsections, a drafter should use the previous subsection letter with a hyphen and a number. For example, if the drafter wants to add a new subsection between Subsections (a) and (b), the drafter should add Subsection (a-1) instead of adding a new Subsection (b) and relettering the subsequent subsections.
- When adding a definition to an alphabetized definitions section, a drafter should use the previous subdivision number with a hyphen and a letter. For example, when adding a definition between "(3) Kiwi" and "(4) Orange," the drafter should add "(3-a) Lemon."
- When repealing a subsection, a drafter should simply repeal that subsection rather than bracketing out the subsection and relettering subsequent subsections. A gap in the section is preferable to having several versions of the statute printed.
- A drafter should avoid reorganizing a statute (i.e., splitting or combining units of law) unless there is a substantive need to do so. Personal preference, aesthetics, or idiosyncrasy should not be a factor. Although it may at times be desirable to reorganize a section, reorganization should be left to the general code update bill.

Drafters should bear in mind that the constitutional prohibition of blind amendment discussed in Subsection (d) of this section applies to sections of bills (other than code or update bills) that redesignate, renumber, or transfer statutes. So while it is permissible, and even usual, for the general code update bill to renumber a statute by simply stating, for example, "Section 5.012, Water Code, is renumbered as Section 5.013, Water Code," any other kind of bill must set out the text of the statute and accomplish the renumbering by amendment:

```
   SECTION 1.  Section 5.012, Water Code, is renumbered
as Section 5.013, Water Code, to read as follows:

   Sec. 5.013 [5.012].  DECLARATION OF POLICY.  The
commission is the agency of the state given primary
responsibility for implementing the constitution and laws
of this state relating to the conservation of natural
resources and the protection of the environment.
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(g) Underlining and bracketing. Another requirement to be observed in the preparation of a direct amendment to existing law is imposed by rules of the senate and the house of representatives. The rules of both houses traditionally require the underlining of new material, and the striking through and bracketing of deleted material, in the printing of committee reports of bills containing direct amendments of existing law. The requirement enables a reader to easily compare the current version of the law with the proposed version.

The rule as adopted in the regular session of the 80th Legislature[1] does not apply to appropriations bills, local or game bills, recodification bills, or redistricting bills, or to sections of a bill that revise the entire text of an existing statute, if the underlining and bracketing would "confuse rather than clarify" meaning. The speaker of the house is authorized to overrule a point of order raised against a violation of the rule if the violation is "typographical or minor and does not tend to deceive or mislead."

The senate version[2] is identical in substance to the house rule, except that game bills are not excluded from its operation. A drafter preparing a direct amendment to a nonlocal game law therefore should comply with the senate's underlining and bracketing requirement to avoid the time and trouble of preparing separate versions of the amendment for consideration in the two houses.

How to Underline and Bracket Material[3]

If language is being added to an existing statute, insert the new language in its appropriate place and underline. For example:

> Sec. 151.005. INSPECTION. The commission shall inspect each hospital applying for a license. A commission inspector may enter the premises of an applicant at any time for the inspection.

Language being deleted from an existing statute should be typed in its current form, enclosed in brackets, and marked through with a line. For example:

> Sec. 721.241. RESIDENT WITHOUT LICENSE. If the person is a resident without a license or permit to operate a motor vehicle in this state, the department may not issue the person a license or permit for the period ordered by the court[~~, but not to exceed one year~~].

If the language being added replaces existing language, insert the new language immediately before the old. For example:

> Sec. 14.162. ISSUANCE OF LICENSE. The members shall [~~committee may~~] issue a license to any health care facility [~~hospital~~] that meets the [~~its~~] requirements.

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[1]Rule 12, Sections 1(b) and (c), Rules of the House of Representatives, 80th Legislature.

[2]Rule 7.10, Rules of the Senate, 80th Legislature.

[3]See also the footnote to Section 3.14(h) of this manual regarding multiple amendments of a single provision in one bill.

If a word is changed to any extent (such as a change in capitalization, number, tense, or spelling), the changed version of the word must be inserted as added language and the old version bracketed. For example:

> Sec. 12.324. DEPOSIT OF FEES. Except as provided by Section 12.325, all [~~All~~] fees collected shall be deposited in the state [~~State~~] treasury for the commissioner's [~~commission's~~] use in the enforcement [~~enforcing~~] of this chapter.

If one or more amendable units (see Subsection (e) of this section) are being added to an existing statute or an existing code or other official compilation, the entire text of the added material should be underlined. For example:

> SECTION 1. Subchapter A, Chapter 4, Family Code, is amended by adding Section 4.004 to read as follows:
>
> Sec. 4.004. EFFECT OF MARRIAGE. A premarital agreement becomes effective on marriage.

The most common error in underlining and bracketing probably is the failure to treat punctuation with the same degree of care as words. The procedures for adding and deleting language apply equally to punctuation and to words.

(h) Arrangement of amendments. If the general and permanent substantive provisions of a bill consist only of amendments to existing law or only of amendments and repealers, it is frequently advisable to arrange the amendments in numerical order by and within a statute, followed by any repealers. There is no rule regarding placement of units of the enacted codes relative to session laws and the Revised Statutes, although session laws and the Revised Statutes are usually included within one sequential list.

If one or more of the amendments form the central subject of the bill and the rest of the amendments are designed primarily to conform other laws to those amendments, it is appropriate to place the most important amendments first, followed by a sequential listing of conforming amendments.

If a bill contains general and permanent substantive provisions that are not amendatory, they should usually precede the amendatory sections. This way, when the amendatory sections are severed from the bill, the remaining new law will begin with Section 1 and proceed consecutively (except for the procedural or other technical provisions, which are sometimes printed only in session law volumes). If the amendments are clearly more important than the nonamendatory provisions, a drafter might want to separate the amendatory and nonamendatory provisions into different articles in the same bill. This approach has the advantage of allowing for consecutive numbering in each article.

In drafting amendments, it is permissible to amend nonconsecutive parts of a single unit, such as Subsections (a), (c), and (g), in the same section of a bill. However, it is not permissible to amend unlike units—e.g., sections and subsections—in the same section: the possibilities for confusing the reader are too great.

SEC. 3.11. REPEALERS. (a) In general. The repeal of a law is accomplished by merely declaring that the law is repealed. The courts have expressly held that the repeal of a law is not covered by the constitutional prohibition of amendment by reference[1] and that the text of the repealed provision need not be set out in full.[2] A drafter may repeal a chapter, article, section, subsection, or other discrete part of an act or code but should not attempt to repeal a part smaller than the smallest segment that is amendable by itself. (See the discussion of "amendable units" in Section 3.10(e).) A drafter should not, for example, try to repeal a single sentence of a subsection; instead, the subsection should be set out in full with the sentence bracketed out and stricken through.

When repealing the last remaining bit of a chapter, subchapter, or other unit, a drafter should repeal the entire unit. This will have the effect of also repealing the heading of the chapter, subchapter, or other unit.

(b) Examples of repealers. Simple repealers are formed as shown in the following examples:

```
   SECTION 1.  Section 53.001(3), Water Code, is
repealed.

   SECTION 2.  Section 841.082(b), Health and Safety
Code, is repealed.

   SECTION 3.  Sections 2054.264 and 2054.2645, Government
Code, are repealed.

   SECTION 4.  Subchapter E, Chapter 87, Election Code,
is repealed.

   SECTION 5.  Chapter 2052, Occupations Code, is
repealed.

   SECTION 6.  Title 2, Tax Code, is repealed.

   SECTION 7.  Section 7, Chapter 342 (S.B. 187), Acts
of the 77th Legislature, Regular Session, 2001, is
repealed.

   SECTION 8.  Section 3, Chapter 528 (S.B. 155), Acts
of the 76th Legislature, Regular Session, 1999 (Article
178d-1, Vernon's Texas Civil Statutes), is repealed.

   SECTION 9.  Section 2.08, Texas Racing Act (Article
179e, Vernon's Texas Civil Statutes), is repealed.
```

[1]Amendment by reference, or "blind amendment," is the amendment of text merely by providing a reference without setting out the text in full; for example: "the third sentence of the last paragraph of Section 4 is amended by substituting 'may' for 'shall'." Amendment by reference is prohibited by Section 36, Article III, Texas Constitution; see Section 3.10(d) of this manual.

[2]"[S]ince there is no constitutional inhibition against the repeal of a statute or a part thereof by reference to its title, the Legislature may exercise its power of repeal in any manner or form which clearly expresses its will or intention in that regard." *Thompson v. United Gas Corporation,* 190 S.W.2d 504 at 507 (Tex. Civ. App.—Austin 1945, writ ref'd).

(c) Repeal of amendatory session law. If the statute being repealed is a session law that amended another provision, the repealer should specify the provision that was amended. This type of repealer is most common in the general code update bill but may appear in other bills amending statutes that were codified in a previous session. For example:

> SECTION 12. Section 5, Chapter 995 (H.B. 2157), Acts of the 79th Legislature, Regular Session, 2005, which amended former Subsection (g), Section 10, Article 21.28-C, Insurance Code, is repealed.

Note that while the code section cited here would usually be styled as "Section 10(g), Article 21.28-C, Insurance Code," in documents prepared for the house of representatives, the longer form ("Subsection (g), Section 10") should be used in this type of repealer regardless of whether the draft is for the house or the senate.

(d) Omnibus repealers. A drafter can repeal multiple statutes in a single section using a format similar to any of the following:

> SECTION 14. REPEALER. The following laws are repealed:
>
> (1) the following articles and Acts as compiled in Vernon's Texas Civil Statutes:[1] 239, 240, 5207c, and 5221g;
>
> (2) Sections 1.03, 1.05(b), 23.01, 23.02, 23.03, 23.04, and 25.19, Alcoholic Beverage Code; and
>
> (3) Section 5, Dredge Materials Act (Article 5415e-4, Vernon's Texas Civil Statutes).
>
> SECTION 22. The following provisions of the Election Code are repealed:
>
> (1) Sections 15.002(d), 15.0215, and 18.064;
>
> (2) Subchapter E, Chapter 87; and
>
> (3) Chapter 126.
>
> SECTION 36. The following laws are repealed:
>
> (1) Section 2054.251(2), Government Code;
>
> (2) Section 841.084, Health and Safety Code;
>
> (3) Subchapters C, D, E, and O, Chapter 1601, Occupations Code; and
>
> (4) Sections 7(b) and (c), Chapter 712 (S.B. 1635), Acts of the 71st Legislature, Regular Session, 1989.

[1]The unofficial Vernon's Texas Civil Statutes citation, without an official citation, may be used in an omnibus repealer to avoid a long series of session law citations. See, however, Subchapter C of Chapter 7 of this manual.

(e) General repealer. A general repealer, rather than specifying which statutes are repealed, merely declares that "all laws in conflict with this Act are repealed to the extent of the conflict." General repealers should be avoided.

The rule of repeal by implication holds that when statutes conflict, the most recent enactment prevails to the extent of the conflict. This rule is fully effective without being restated in a bill as a general repealer.

A careful drafter does not rely on implied repeal; the cleaner, more professional way to deal with statutes in conflict with a new enactment is by conforming amendment or express repeal.

SEC. 3.12. SAVING AND TRANSITION PROVISIONS. (a) Introduction. Saving and transition provisions help to minimize the disruption and inequities that often attend the taking effect of legislation.

A saving provision "saves" from the application of a law certain conduct or legal relationships that occurred before or existed on the effective date of the law. One example is the "grandfather clause," which is discussed in Subsection (h) of this section. Another type, commonly used when a criminal statute is amended or repealed, provides for the continued application of the former law to conduct occurring before the effective date of the repeal or amendment. Section 311.031, Government Code, is a general saving clause applicable to those codes to which the Code Construction Act applies.[1]

Transition provisions provide for the orderly implementation of legislation, helping to avoid the shock that can result from an abrupt change in the law. The most common transition provision is the effective date section, which provides for orderly implementation of a statute by delaying its effective date or by providing staggered effective dates for various provisions. Section 3.14 specifically addresses delayed and staggered effective dates.

A legislator making a drafting request is usually much more concerned about the substance of the requested bill than about saving or transition problems, and it is the drafter's responsibility to attempt to foresee any problems of this type that might arise and to ensure that they are dealt with appropriately. Foreseeing these problems requires a combination of legal and practical analysis, imagination, and common sense. The task begins with the question: What are the undesirable consequences that might occur if this law were enacted with no saving or transition provisions? If the proposed law is covered by the Code Construction Act, the drafter must consider whether the general saving provisions of that act take care of the problems adequately. If that act does not apply or does not adequately resolve the problem, the drafter must fashion whatever provisions are necessary, consistent with the objectives and desires of the legislative client.

This section deals with some areas of law in which transition problems often arise. The sample transition and saving provisions that are included are merely illustrative and should not be blindly adopted. However, the discussion and examples should give the beginning drafter some understanding of saving and transition problems and an idea of how to approach them.

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[1]The Code Construction Act is reproduced in full in Appendix 5.

(b) Separate sections for transition and effective date provisions. Although effective date provisions are in fact a type of transition provision, this manual treats them as separate from transition provisions because it is necessary to draft them in separate sections of a bill. The automated statute update program, used to automatically update the statutes to incorporate changes enacted during each regular or special session, requires for its most effective application that transition language be stored in the database separately from effective date provisions. Part of the reason for storing the two kinds of provisions differently is that transition provisions usually have continuing effect for some temporary period while effective dates immediately become executed law.

A drafter must place transition language and effective date language in separate sections of a bill. It is acceptable, if needed, to have more than one section in a bill contain transition language, as long as none of the transition sections contain effective date language.

(c) Insurance. A bill that affects the coverage of insurance policies, such as a bill providing for mandatory coverage of a particular condition, requires a transition and saving provision that preserves the law under which the policy was governed before the effective date of the bill. Insurance policies are a contract between the insurer and the insured; as a result, the legislature is limited by Section 16, Article I, Texas Constitution (no impairment of obligation of contract), in the extent to which it may enact laws that affect insurance contracts.

This model transition provision clearly preserves the prior applicable law, whatever the law may be, to govern contracts executed before the new statutory requirements apply. A typical transition provision (in this example, for a bill with an effective date of September 1, 2009) will read:

> SECTION 2. This Act applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2010. A policy delivered, issued for delivery, or renewed before January 1, 2010, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

This transition provision accomplishes two goals:

(1) it allows the regulatory board the time between September 1 and January 1 to adopt rules and approve policies under a statute that is in effect but does not yet apply to policies; and

(2) it identifies clearly and preserves the prior law to govern policies issued either before September 1 or during the interim between September 1 and January 1.

(d) Occupational licensing. If a new occupational licensing act prescribes substantial educational or similar requirements for obtaining a license, the legislature occasionally will choose to include a "grandfather clause" (see Subsection (h) of this section) exempting from all or some of the requirements those persons who already have substantial experience in the occupation. For example:

SECTION 14. EXEMPTION. A person who has engaged in the practice of interior decorating in this state for at least three years preceding the effective date of this Act is entitled to obtain a license under Section 7 without fulfilling the educational requirements prescribed by Section 4 if the person has the other qualifications required by this Act and if, before January 1, 2010, the person:

(1) submits an application as required by this Act;

(2) passes the examination required by Section 5; and

(3) pays the required license fee.

The effective date prescribed for a new licensing law can also serve a transition purpose. See Section 3.14(k).

(e) Criminal law. In criminal law, the three circumstances presenting the most significant possibility for trouble are: (1) repealing an offense; (2) changing the elements of an existing offense; and (3) changing the punishment for an existing offense.

Repealing an Offense

Under Texas law, repeal of a criminal law without a saving clause effectively prevents conviction of a person after the effective date of the repeal for an offense committed while the law was still in effect.[1] An appropriate saving clause to prevent this from occurring is as follows:

SECTION 3. (a) The repeal by this Act of Subchapter G, Chapter 161, Health and Safety Code, does not apply to an offense committed under that subchapter before the effective date of the repeal. For purposes of this section, an offense is committed before the effective date of the repeal if any element of the offense occurs before that date.

(b) An offense committed before the effective date of the repeal is covered by that subchapter as it existed on the date on which the offense was committed, and the former law is continued in effect for that purpose.

Section 311.031, Government Code, is a general saving clause for legislation to which the Code Construction Act applies, including the Penal Code. For reasons stated at the conclusion of this subsection, however, drafters are cautioned against routinely relying on this general clause for criminal law purposes.

[1]See *Wall v. State,* 18 Tex. 683 (1857); *Greer v. State, 22* Tex. 588 (1858); *Sheppard v. State,* 1 [Tex.] App. 522 (1877); *United States v. Tynen,* 78 U.S. (11 Wall.) 88, 20 L. Ed. 153 (1871); and *United States v. Chambers,* 291 U.S. 217, 54 S. Ct. 434 (1934).

Changing the Elements of an Offense

The amendment of a criminal statute to change the elements of an existing offense is often equivalent to the repeal of the former version of the statute. Assume that the section of the Penal Code prohibiting unauthorized use of a vehicle were amended as follows:

> Sec. 31.07. UNAUTHORIZED USE OF VEHICLE. (a) A person commits an offense if he intentionally or knowingly operates another's boat, airplane, or bicycle [~~motor-propelled vehicle~~] without the effective consent of the owner.
>
> (b) An offense under this section is a state jail felony.

Before the effective date of the amendment, unauthorized use of a snowmobile constituted an offense under this section because a snowmobile is a "motor-propelled vehicle." Deleting that phrase from the statute is equivalent, as to snowmobiles, to repeal of a statute prohibiting the unauthorized use of those vehicles. If the former law were not appropriately "saved," a person who took a joyride in a snowmobile before the effective date of the amendment could not be prosecuted afterwards.

The usual saving clause for an amendment changing the elements of an offense is:

> SECTION 9. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date.
>
> (b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

Note that under the preceding clause an offense in the process of being committed at the instant the amendment takes effect will be prosecuted under the former law if any element of the crime occurred before the effective date; assigning such an offense for punishment under the new law could well be held to violate the constitutional prohibition against ex post facto laws.[1]

Changing the Punishment for an Offense

A bill changing only the punishment for an offense generally presents few problems and can be handled with the same saving clause as the one previously suggested for a change in the elements of the offense. If the change in punishment is clearly an *increase,* that clause will almost always be appropriate.

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[1]See Section 16, Article I, Texas Constitution, and Section 10, Article I, U.S. Constitution.

If the change in punishment is clearly a *reduction,* additional factors should be considered. If the reduced punishment is to apply only prospectively, the type of clause suggested for a change in the elements of an offense is appropriate. Since the constitutional prohibition against retroactive laws does not bar the retroactive reduction of punishment for offenses in which a conviction has not yet been obtained,[1] this option must be considered. The general saving clause in Section 311.031, Government Code, provides for retrospective reduction in punishment. Subsection (b) of that section states:

> If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

Is a Change in Punishment an Increase or Reduction?

A word of caution should be offered here: not all changes in punishment are easily classified as either an increase or a reduction. Suppose, for example, that a punishment by a fine of "not more than $200" is amended to read "not less than $50 and not more than $150 [~~$200~~]."

The lowering of the maximum fine can be seen as a reduction in punishment, but the establishment of a minimum fine could be considered an increase. It would be shaky at best to attempt to require retroactive application of this change in punishment. In such a case as this, the drafter has two safe options. One is to simply treat the change as an ordinary enhancement of punishment and retain the former punishment for all offenses committed before the effective date of the change. On the other hand, an affected defendant could be permitted to elect, before the assessment of punishment, to be punished under the new law, as was provided for in the following saving provision in the 1973 act that enacted the current Penal Code:

> (c) In a criminal action pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins.[2]

(If a clause such as this is used, it must be coupled with a general saving clause preserving the punishment prescribed by the former law for those defendants who do not elect to be punished under the new law.)

Drafters should note that the standard punishments established by Chapter 12 of the Penal Code are so designed that the punishment for each grade of offense is clearly greater than the punishment for the next lower grade. There can therefore be no question about whether changing the punishment for an offense from one of these standard punishments to another is an increase or reduction.

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[1]See *Holt v. The State,* 2 Tex. 363 (1847); *Millican v. State,* 167 S.W.2d 188 (Tex. Crim. App. 1942); *Calder v. Bull,* 3 Dall. 386, 1 L. Ed. 648 (1798); and *Rooney v. North Dakota,* 196 U.S. 319, 25 S. Ct. 264 (1905).

[2]Section 6(c), Chapter 399, Acts of the 63rd Legislature, Regular Session, 1973. The requirement that the defendant affirmatively choose to be punished under the new law is to avoid a later objection to the imposition of punishment under an ex post facto law.

Reliance on the Code Construction Act for Criminal Law Purposes

Routine reliance on Section 311.031, Government Code, for bills amending or repealing criminal statutes is not advised. Section 311.031 fails to address the question of when an offense actually occurs; the sample clauses used earlier in this subsection assign an offense for treatment under the former law if any element of the offense occurred before the effective date of amendment or repeal. Section 311.031(b), which provides for retroactive application of a reduction in punishment, has three other shortcomings: (1) it distinguishes between cases on the basis of whether the punishment has been "already imposed" without defining what is meant by the imposition of punishment (*presumably* punishment is imposed at the time of sentencing); (2) it fails to recognize the fact that, as earlier explained, some changes in punishment defy classification as either a reduction or an enhancement; and (3) in many instances, a legislative client will not desire the retroactive reduction in punishment Section 311.031 calls for.

(f) Taxation. Common changes in tax laws raising transition issues include repealing a tax, changing the rate of a tax, and adding or deleting exemptions. These types of changes often require a saving provision to ensure that a tax liability that accrued under the former version of the law remains enforceable. The general saving provisions in Section 311.031, Government Code, are often sufficient for this purpose, and since most taxes are imposed under the Tax Code, which is subject to the Code Construction Act, specific saving provisions are often unnecessary. When a specific saving provision is needed, one such as the following is often used:

> SECTION 8. APPLICABILITY OF FORMER LAW. The change in law made by this Act does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

Since taxes are generally computed and reported on a periodic basis (monthly, quarterly, or annually), implementing a change on the first day of a reporting period is usually less confusing to the payers and collectors of the tax. If a change is to take effect during a reporting period, it may be desirable to include specific transition language providing for administration of the tax during that particular reporting period or to merely provide that the official who administers the tax shall provide for the transition by rule or directive.

(g) Family law. The existence of continuing jurisdiction in family law cases presents a trap for the unwary drafter. The trial court in these cases usually retains jurisdiction over what would be final judgments in other kinds of cases. Much confusion can result if the drafter fails to address the question of whether a new law should apply to an old case that, after the effective date of a change in the law, comes back to the trial court on a motion to clarify or amend a previous order for enforcement purposes.

The simplest solution is to exempt from any change in the law litigation instituted before the effective date of the change. This may not be what the client desires, however, and is not always the fairest solution. Although a retroactive change in law affecting private rights is barred by the constitution, the legislature is not prohibited from changing the procedure by which those rights are enforced.[1]

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[1]See *Harrison v. Cox,* 524 S.W.2d 387 (Tex. Civ. App.—Fort Worth 1975, writ ref'd n.r.e.).

The question of whether to apply a procedural change to pending litigation is not necessarily a simple yes or no proposition, as it is possible to adopt a middle ground that allows the courts to decide, on a case-by-case basis with appropriate guidelines, whether to apply a new procedural rule to pending litigation. For example, the transition clause of a 1983 act dealing with the filing in adoption cases of a report on a child's health, social, educational, and genetic history provided:

> A court having, on the effective date of this Act, jurisdiction of a suit affecting the parent-child relationship in which an adoption is sought may waive the requirement under Section 16.032 [now 162.008], Family Code, that a copy of the summary report must be filed, if the court finds that the making or filing of the report is not feasible or would cause an injustice.

(h) The "grandfather clause." "Grandfather clause" has come to refer to a provision in a licensing statute that automatically grants a license or similar prerogative to those established in an occupation or business before its regulation.[1]

Normally, these clauses function by exempting an applicant from a licensing examination on the justification that "those already practicing their profession were lawfully and satisfactorily performing their services on the date the regulatory act became effective . . . ."[2]

Like the regulatory statutes of which they are a part, grandfather clauses are subject to the constitutional considerations of equal protection and due process. Texas courts have found that a clause meets the requirements of equal protection if it is "neither capricious or arbitrary" in its policy.[3] Similarly, due process has been held to require "both specificity and fairness" in a law.[4]

These somewhat nebulous constitutional directives can be better understood by reference to statutory examples of two basic types of grandfather clauses. The first type includes clauses in which mandatory certification is meant to prevail. Those clauses flatly require certification of applicants meeting the grandfather stipulations and make no allowances for the regulatory authority to determine suitability of a questionable applicant. (For an example of this type of clause, see Section 1053.158, Occupations Code.) The second type includes somewhat modified clauses that allow for discretion on the part of the board, yet retain the constitutionally necessary specificity. (See Section 605.254, Occupations Code, for an example of a modified clause.)

Even apart from constitutional issues, the need for specificity cannot be overemphasized when drafting a grandfather clause. Legal problems arising from these clauses can nearly always be traced to ambiguous language or the omission of certain elements necessary to determine eligibility. The following "grandfather's laundry list" is compiled from a review of case law and other sources:

- If a certification clause is meant to be mandatory, avoid using "may" (as in, "the board *may* issue a license to an applicant"). This has been held to imply a grant of

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[1]The name "grandfather clause" is derived from post–Civil War constitutional provisions in certain southern states. Those provisions imposed stringent property or literacy tests for voting in order to deny the franchise to the newly freed slaves. Most white citizens were exempted from the requirements by a "grandfather clause," applicable to descendants of persons eligible to vote before 1867.

[2]See *Bloom v. Texas State Board of Examiners of Psychologists,* 492 S.W.2d 460 (Tex. 1973).

[3]See *Hurt v. Cooper,* 113 S.W.2d 929 (Tex. Civ. App.—Dallas 1938, no writ).

[4]See *Schware v. Board of Bar Examiners,* 353 U.S. 232 (1957).

discretion. Instead, say "the board *shall* issue a license to an applicant who . . ." or "an applicant who possesses these qualifications *is entitled to* a license."[1]

- State time limits, if any, under which applicants may file for grandfather exemptions and include this deadline information in the clause itself.[2]
- Be explicit about the type or length of service required for exemption and consider all eventualities. Must the service be continuous? Must it occur immediately before the act's effective date? Must it take place in the state?[3]
- Specify any applicable residence requirements. Does the grandfather clause apply to state residents only? Must applicants be residing in the state at the time of enactment?[4]

(i) The illusory saving clause. To conclude this section, a final caution is offered: Beware the illusory saving clause. This clause provides more or less as follows:

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   SECTION 3. This Act applies to all litigation instituted
on or after the effective date of this Act.
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Such a provision is generally harmless—it merely states what would be the case in any event, given the general presumption that a law applies only prospectively. What the provision fails to do is save former law. The drafter of the preceding clause probably *meant* to say, but didn't, that the former law continues to apply to litigation instituted before the effective date of the act.

SEC. 3.13. SEVERABILITY AND NONSEVERABILITY CLAUSES. (a) Severability in general. When part of a statute is held to be invalid, the remainder of the statute is not affected by the invalidity if the court determines that the remainder of the statute is "severable" from the invalid part. A determination of severability requires an affirmative answer to two questions:

(1) Is the remainder of the statute capable of being given effect after the invalid part is removed?

(2) Would the legislature have enacted the remainder of the statute if the invalid part had not been included in the first place?

(b) Severability clauses. To encourage a finding of severability, drafters sometimes include in a bill a "severability clause" that reads substantially as follows:

```
If any provision of this Act or its application to any
person or circumstance is held invalid, the invalidity
does not affect other provisions or applications of
this Act that can be given effect without the invalid
provision or application, and to this end the provisions
of this Act are declared to be severable.
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[1] *Bloom, supra.*

[2] See Op. Tex. Att'y Gen. Nos. V-595 (1948), V-1486 (1952).

[3] *Bloom, supra.*

[4] See the annotations at 4 ALR2d 688.

The efficacy of the severability clause historically has been a matter for debate. Review of case law indicates that presence of the clause does not guarantee a finding of severability, while absence of the clause does not preclude such a finding. Probably the best that can be said for the clause is that it provides a clear statement of legislative intent that, in a close case, may influence a court to find that a statute is severable.

The question of whether to include a severability clause in a particular bill has largely been made moot in Texas by enactment of Sections 311.032 and 312.013, Government Code, which provide that all statutes are severable unless they declare that they are not.

Drafters are advised *not* to include a severability clause in a bill unless the requestor, after being advised of these general severability statutes, nonetheless insists on insertion of the clause.

(c) Nonseverability clauses. Nonseverability clauses come in two types: a "general" nonseverability clause, which declares that *none* of the provisions of an act are severable, and a "special" nonseverability clause, which declares that *specific* provisions of an act are not severable from one another.

The **general** nonseverability clause, if given effect according to its terms, would destroy a whole act because of a constitutional flaw in one minor provision. It should be used only when it is specifically requested.

A **special** nonseverability clause may be useful if the legislature wants to make clear that even though two provisions of an act could be given effect by themselves, both provisions are meant to be treated as a "package" and rise or fall together against a constitutional challenge. Language such as the following may be used for the purpose:

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   SECTION 3. NONSEVERABILITY. Section 1 of this Act,
prohibiting the manufacture of widgets without a
license, and Section 2 of this Act, imposing a tax on the
manufacture of widgets, are not severable, and neither
section would have been enacted without the other. If
either provision is held invalid, both provisions are
invalid.
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SEC. 3.14. EFFECTIVE DATE. (a) In general. The need for the long-standing Texas practice of including an "emergency clause" in each bill was eliminated by constitutional amendment in 1999. The emergency clause, usually the last section of a bill, permitted the legislature by extraordinary vote to suspend either or both of two distinct constitutional rules: the rule requiring a bill to be read on three several days and the rule prohibiting an act from taking effect before 90 days after the date of adjournment. Although the extraordinary vote requirement remains, ***an emergency clause is no longer required or useful for bills. In its place, however, each bill should have a stated effective date.***

(b) Separate sections for effective date and transition provisions. The automated statute update program, used to automatically update the statutes to incorporate changes enacted during each regular or special session, requires for its most effective application that effective date language be stored in the database separately from transition provisions. Part of the reason for storing the two kinds of provisions differently is that while effective dates immediately become executed law, transition provisions usually have continuing effect for some temporary period.

A drafter must place effective date language and transition language in separate sections of a bill. It is acceptable, if needed, to have more than one section in a bill contain effective date language, as long as none of the effective date sections contain transition language.

(c) Constitutional effective date rule. Section 39, Article III, Texas Constitution, provides that a law may not take effect "until ninety days after the adjournment of the session at which it was enacted" unless the legislature provides for an earlier effective date by vote of two-thirds of the membership. If the effective date rule is not suspended, or if an act does not specify an effective date, it will take effect on the 91st day after the date of final adjournment.[1]

There is not a separate vote to suspend the effective date rule. The vote that determines whether the rule is suspended is the final vote in each house on passage of the version of the bill on which both houses agree, incorporating any amendments or conference committee report changes.[2]

(d) Immediate effect. To make an act effective immediately, the drafter should include the following section:

> SECTION 5. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect [September 1, 2009] [(stated date), 2009] [on the 91st day after the last day of the legislative session].

In choosing the stated effective date in the second sentence of this clause, the drafter should choose September 1 for a bill to be enacted at a regular session unless considerations specific to the bill require another date. The 91st day is a mobile, arbitrary date dictated as the constitutional default but without any specific governmental purpose and can fall on any date from August 26 to September 1. A date in the last week of August (for instance, August 31, 2009—the 91st day after the scheduled adjournment sine die of the 81st Legislature) is an odd date that confuses many as a date for laws to take effect. Because the state fiscal year begins September 1, a date that falls on or within a few days after the 91st day of a 140-day session, it is a common practice to choose September 1 as the effective date of a bill, particularly if the bill has fiscal implications.

A bill that is "immediately" effective takes effect on the date of the last action necessary for it to become law, which is:

(1) the date the governor approves the act;

(2) the date the governor files the act with the secretary of state (having neither approved nor vetoed it);

(3) the date the appropriate period for gubernatorial action expires, if the governor fails to act within that period (see Section 14, Article IV, Texas Constitution); or

(4) in the event of a veto, the date the veto is overridden.

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[1]See *Halbert v. San Saba Springs Land and Livestock Ass'n*, 34 S.W. 639 (Tex. 1896). See also the perpetual calendar in Section 7.87 of this manual.

[2]See *Caples v. Cole*, 102 S.W.2d 173 (Tex. 1937); *Ex parte May*, 40 S.W.2d 811 (Tex. Crim. App. 1931); Op. Tex. Att'y Gen. Nos. O-5471 (1943), O-5185 (1943).

(e) Specific effective date. If an act is to take effect on a specific date, whether before or after the 91st day after adjournment, but not immediately, the drafter should use an effective date section that specifies the date.

For effect before the 91st day after adjournment, but not immediately:

> SECTION 5. EFFECTIVE DATE. This Act takes effect July 1, 2009, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this Act takes effect [September 1, 2009] [(stated date), 2009] [on the 91st day after the last day of the legislative session].

A law may be given an effective date *later* than the 91st day without suspending the constitutional effective date rule.[1] As noted in the previous subsection, because the state fiscal year begins September 1, the drafter should choose September 1 as the effective date unless considerations specific to the bill require a different date. For example:

> SECTION 5. This Act takes effect September 1, 2009.

(f) Effective date contingent on event or expiration of period. A drafter may need to provide for a bill to go into effect on the occurrence of an event or on the expiration of a specified period after that event takes place. (If the occurrence of an event may be disputed, an appropriate public official should be assigned responsibility for officially and publicly finding that the event has occurred.)

If the contingency on which a bill is to take effect *may* occur sooner than the constitutional effective date, a suspension of the effective date rule is necessary against that possibility. (Of course, if the contingency actually occurs on or after the constitutional effective date, the unnecessary suspension of the rule will have done no harm.) The following example assumes that the contingency may, but will not necessarily, occur sooner than the constitutional effective date:

> SECTION 7. (a) This Act takes effect on the date on which the United States Census Bureau officially publishes the results of the 2000 federal decennial census if that date:
>
> (1) occurs before the 91st day after the last day of the legislative session and this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; or
>
> (2) occurs on or after the 91st day after the last day of the legislative session.

[1] See *Norton v. Kleberg County*, 231 S.W.2d 716 (Tex. 1950); *Popham v. Patterson*, 51 S.W.2d 680 (Tex. 1932); *Calvert v. General Asphalt Co.*, 409 S.W.2d 935 (Tex. Civ. App.—Austin 1966, no writ).

(b) If that date of publication occurs before the 91st day after the last day of the legislative session and this Act does not receive the vote necessary for effect on that publication date, this Act takes effect [September 1, 2009] [(stated date), 2009] [on the 91st day after the last day of the legislative session].

(g) Effective date contingent on another bill or a constitutional amendment. The following is an example of language used to make a bill contingent on another bill:

SECTION 6. This Act takes effect only if House Bill 1676, Acts of the 81st Legislature, Regular Session, 2009, becomes law. If that bill does not become law, this Act has no effect.

SECTION 7. This Act takes effect September 1, 2009.

To make a bill effective on adoption of a proposed constitutional amendment, an effective date section such as one of the following is generally used:

SECTION 2. This Act takes effect on the date on which the constitutional amendment proposed by H.J.R. No. 45, 81st Legislature, Regular Session, 2009, takes effect.[1] If that amendment is not approved by the voters, this Act has no effect.

OR

SECTION 12. EFFECTIVE DATE. This Act takes effect January 1, 2010, but only if the constitutional amendment proposed by S.J.R. No. 9, 81st Legislature, Regular Session, 2009, is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

At the time a bill contingent on the adoption of a constitutional amendment is drafted, the drafter often does not know the number of the joint resolution proposing the amendment, either because the resolution has not yet been introduced or because two or more resolutions have been introduced and it is not known which one will eventually pass. A solution to this problem is to refer to an amendment generically ("the constitutional amendment proposed by the 81st Legislature, Regular Session, 2009, abolishing the office of county surveyor"). This procedure works well if multiple, differing joint resolutions on the same subject have not been introduced and are not anticipated. If differing resolutions on the same subject are expected, the drafter may be able to distinguish the relevant constitutional amendment from the others by referring to the amendment with slightly more detail.

Another drafting approach is to leave blanks in the effective date section, to be filled in later ("__J.R. No.__"). The intense activity of the legislative session makes this approach somewhat dangerous, however. Through an oversight, the appropriate letters and number might never be inserted in the blanks. Therefore, this approach should be used with caution.

[1]See Section 4.07(c) of this manual concerning the effective date of amendments to the state constitution.

(h) Parts of a bill to take effect on different dates. To provide different effective dates for different parts of a bill, one of the following forms may be used:

- If none of the effective dates is sooner than the constitutional effective date:

SECTION 3. Section 171.002, Tax Code, as amended by this Act, takes effect January 1, 2010.

OR

SECTION 4. EFFECTIVE DATE. Section 1 of this Act takes effect September 1, 2009. Sections 2 and 3 of this Act take effect January 1, 2010.

- If part, but not all, of an act is to take effect sooner than the constitutional effective date:

SECTION 8. (a) Except as provided by Subsection (b) of this section:

(1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect [September 1, 2009] [(stated date), 2009] [on the 91st day after the last day of the legislative session].

(b) Section 38.022, Utilities Code, as added by this Act, takes effect January 1, 2010.

OR

SECTION 18. This Act takes effect September 1, 2009, except that Sections 1 and 2 of this Act take effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Sections 1 and 2 take effect September 1, 2009.

- To delay or accelerate the effective date of particular sections or applications of an act:

SECTION 2. (a) Except as provided by Subsection (b) of this section:

(1) this Act takes effect June 1, 2009, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for effect on that date, this Act takes effect [September 1, 2009] [(stated date), 2009] [on the 91st day after the last day of the legislative session].

(b) The Department of Agriculture may not destroy or treat cotton as permitted by Section 74.118, Agriculture Code, as added by this Act, before June 1, 2010.

OR

SECTION 7. This Act takes effect September 1, 2009, except that Sections 2 and 6, to the extent they prohibit the operation of a food service establishment, retail food store, mobile food unit, or temporary food service establishment without a license from the Department of State Health Services, take effect January 1, 2010.

OR

SECTION 14. This Act takes effect January 1, 2010, except that Section 231.014, Family Code, as added by this Act, takes effect September 1, 2009.

Stating an effective date for a section within the section itself is permissible if the section is amendatory and the effective date is contained in the recital of the law to be amended. For example:

SECTION 14. Effective January 1, 2010, Section 154.021(b), Tax Code, is amended to read as follows:

This technique may be particularly useful in a long amendatory bill, such as an omnibus tax bill. Placing the effective date in the section to which it applies eliminates the possibility that amendment of the bill during the legislative process and attendant renumbering of sections may result in incorrect references in a separate effective date section.

Occasionally, it is necessary to amend the same statute in different ways to take effect at different times, as to increase the rate of a tax by degrees. To accomplish this, multiple amendatory sections are required. The first section amends the current law as appropriate to accomplish the initial change. Subsequent sections amend the same law and take effect at later dates specified in the recitals.[1] In this instance, placing the effective date in the recital not only eliminates possible renumbering problems but also makes it readily apparent to a reader why the same law is being amended more than once in the same bill.

(i) Appropriations acts. Section 39, Article III, Texas Constitution, expressly exempts "the general appropriation act" from the effective date rule. As a result, a general appropriations act takes effect according to its terms without the requirement of an extraordinary affirmative vote in each house. For a general appropriations act passed

[1]Each subsequent amendment is underlined and bracketed against current law and not against the law as proposed to be amended by the previous section.

at a regular session, this exception is not needed because the state fiscal year begins on September 1, which always falls more than 90 days after adjournment. Ordinary acts that merely contain an appropriation are not exempted from the effective date rule.

(j) Effectiveness contingent on appropriations. It is a widely believed myth that an executive agency is required to implement a statute only if the legislature appropriates funds for that implementation. The lack of specific appropriations for a new statutory duty does not, as a rule of law, relieve the agency of its duty.

Although it became a routine practice in the 76th Regular Session for the legislature to add by amendment a provision that made a bill's effectiveness contingent on appropriations, a drafter should NOT make the legal effectiveness of a bill contingent on appropriations. To do so creates ambiguity because of the indefiniteness of when, if ever, the act will take effect. If the legislature that enacts the bill fails to make a specific appropriation, the act is held in a legal limbo awaiting the action of a future legislature to appropriate funds. In the 76th Regular Session, the legislature by amendment to a fiscal matters bill ultimately made a substantive decision as to which bills containing the contingency amendment would or would not take effect.

If it is necessary to provide a contingency for the failure of appropriations specific to the purpose of an act, it is preferable for the drafter to expressly provide that *implementation* of a statute is contingent on appropriations specific to that purpose. The following provision would accomplish that result:

> SECTION 8. The Texas Historical Commission is required to implement this Act only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the commission may, but is not required to, implement this Act using other appropriations available for the purpose.

(k) Occupational licensing. Putting a licensing law into effect all at once will likely create a period, while licensing procedures are being established, during which no one in the state is legally authorized to pursue the affected occupation.

This problem can be avoided by staggered implementation, delaying the effective date of the mandatory licensing requirement until the administering agency has had time to get organized and is ready to do business. For example:

> SECTION 14. This Act takes effect January 1, 2010, except that Section 204.151, Occupations Code, as added by this Act, takes effect January 1, 2011. [Section 204.151 establishes the licensing requirement.]

If enforcement of a mandatory licensing requirement is accomplished through imposition of a penalty, the effective date of the penalty provision should be delayed to the same effective date as the mandatory licensing provision.

(l) Drafting considerations. An appropriate effective date can be critical to the orderly implementation of a new law. The larger body of law within which the new law will operate sometimes provides guidance regarding an appropriate effective date. A change in sales tax law, for example, might create less confusion if it takes effect on the first day of an existing reporting period instead of during one, and a change in a requirement, qualification, or exemption that is determinable on a specific annual date, such as property tax exemptions determined as of January 1, could most easily be administered by becoming effective on that date. The establishment of a new program before funding is available creates obvious difficulties; for this reason, many laws are drafted to take effect on the first day of a fiscal biennium.

Another consideration with a new program is whether rules under the program must be adopted for the program to work; it is often necessary to have rulemaking provisions take effect before portions of the act that are dependent on the rules become effective.[1] The question of notice must also be considered, particularly if affected persons may need time to adjust their conduct to a new law. Attention to the effective date issue at the drafting stage can save much trouble later on.

SEC. 3.15. PROVISIONS RELATING TO CIVIL PROCEDURE. This section addresses the drafting of a bill that proposes a change or addition to civil procedure.

Statutorily, the Texas Supreme Court has the power to both promulgate rules of civil procedure and repeal any legislative enactment that conflicts with the adopted rules. Section 22.004(a), Government Code, provides that the Texas Supreme Court has "full rulemaking power in the practice and procedure in civil actions." Subsection (c) of that section provides that a rule adopted by the supreme court "repeals all conflicting laws and parts of laws governing practice and procedure in civil actions." The supreme court has not hesitated to exercise its power under this section: a prime example is the court's repeal of Chapter 9, Civil Practice and Remedies Code, as being in conflict with Rule 13, Texas Rules of Civil Procedure. The only limitation on this statutory delegation is in Section 22.004(b), Government Code, which provides that the legislature may disapprove a supreme court rule or amendment to a rule. It is not clear whether the supreme court can reenact a rule that has been disapproved by the legislature.

Although the legislative delegation of power to the supreme court contained in Section 22.004, Government Code, to enact rules of civil procedure and repeal laws that conflict with those rules is fairly straightforward, the constitutional provisions relating to the authority of the court to adopt rules of civil procedure are more ambiguously expressed. Section 31, Article V, Texas Constitution, states that the supreme court shall "promulgate rules of civil procedure for all courts not inconsistent with the laws of the state . . . ." On its face, this language seems to indicate that the supreme court does not have the constitutional authority to either adopt rules that conflict with statutes or repeal statutes that conflict with its rules. This was the conclusion of the court itself in *Few v. Charter Oak Fire Insurance Company*, 463 S.W.2d 424 (Tex. 1971), in which the constitutional language "not inconsistent with the

[1]Section 2001.006, Government Code, enacted in 1999, expressly permits state agencies to adopt rules or take other administrative action in preparation for implementation of a statute that has become law but has not yet taken effect. The rule may not take effect earlier than the legislation being implemented takes effect.

law of the State" (then found in Section 25, Article V, Texas Constitution) was construed as a limitation on the power of the court to have its rule supersede a conflicting statute. The supreme court found that "when a rule of the court conflicts with a legislative enactment, the rule must yield." *Id.* at 425.

In drafting a bill that proposes what may be considered a change or addition to civil procedure, the drafter should consider in appropriate cases including language that attempts to withdraw the broad powers to repeal conflicting statutes granted the supreme court under Section 22.004, Government Code. The following is suggested language:

```
   (b) Notwithstanding Section 22.004, Government Code,
the supreme court may not amend or adopt rules in
conflict with this chapter [section, Act, etc.].
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Examples of the use of this language can be found in Sections 52.005(b) and 64.091(k), Civil Practice and Remedies Code.[1] When drafting what is arguably a law relating to civil procedure, the drafter should realize that inclusion of the suggested language is essentially a matter of policy for the requestor to decide. The requestor must balance the likelihood of repeal of the law by a subsequent supreme court rule against the importance of adhering to the legislative goal, expressed in the delegation contained in Section 22.004, Government Code, of uniform and current rules for the courts.

[1]See *Laird v. King*, 866 S.W.2d 110 (Tex. App.—Beaumont 1993, no writ), relying on this language in Section 52.005, Civil Practice and Remedies Code, to give effect to a statute in preference to a conflicting rule of procedure.

CHAPTER 4
JOINT RESOLUTIONS TO AMEND TEXAS CONSTITUTION

SEC. 4.01. INTRODUCTION. Section 1, Article XVII, Texas Constitution, provides that the legislature, "by a vote of two-thirds of all the members elected to each House," may propose amendments to the state constitution. Amendments may be proposed "at any regular session, or at any special session when the matter is included within the purposes for which the session is convened."

Although the constitution does not specify that a particular type of legislative document be used to propose a constitutional amendment, a joint resolution is always used for the purpose. Rules of the house of representatives require the use of the joint resolution to propose a constitutional amendment.[1] Senate rules, while not specifically imposing such a requirement, clearly assume that a joint resolution will be used.[2]

Joint resolutions proposing constitutional amendments differ in form only slightly from bills. The parts of a joint resolution and the sections in this chapter where they are discussed are:

- introductory formalities:
  - heading (Sec. 4.02)
  - title (Sec. 4.03)
  - resolving clause (Sec. 4.04)
- amendatory sections (Sec. 4.05)
- repealers (Sec. 4.06)
- temporary provisions (Sec. 4.07)
- submission clause (Sec. 4.08)

This chapter concludes with a discussion in Section 4.09 of the permissible scope of a single proposed amendment.

SEC. 4.02. HEADING. The heading of a joint resolution is the same as that of a bill except that the blank for the resolution number is labeled "J.R." The heading on a final draft as delivered to the author appears as follows:

By: _____ _____.J.R. No. _____

[1]Rule 9, Section 1, of the Rules of the House of Representatives of the 80th Legislature, provides that a proposed constitutional amendment "shall take the form of a joint resolution."

[2]See Senate Rules 10.01–10.03 for the 80th Legislature and the accompanying commentary in the *Texas Legislative Manual.*

SEC. 4.03. TITLE OR CAPTION. Although proposed constitutional amendments are not subject to the constitutional title (or caption) rule,[1] a title, similar in format to a bill title, is always included in a joint resolution. It appears as follows:

A JOINT RESOLUTION

proposing a constitutional amendment relating to the manner in which a vacancy in the office of lieutenant governor is to be filled.

The description of the subject of the amendment should be introduced with the phrase "proposing a constitutional amendment . . . ." The singular term "amendment" should be used even if the resolution proposes changes in two or more distinct provisions of the constitution, proposes two or more discrete additions to the constitution, or proposes a combination of additions and changes in existing provisions. The plural term "amendments" is appropriate only if the resolution proposes distinct amendments, each of which is to be submitted under a separate ballot proposition.[2] The subject of the amendment should be described in general terms, omitting any reference to the specific sections of the constitution affected or to other detail.

SEC. 4.04. RESOLVING CLAUSE. There is no constitutional requirement of a particular resolving clause for a joint resolution, but the following clause is always used:

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SEC. 4.05. AMENDATORY SECTIONS. The substance of the proposed amendment is contained in one or more sections that are exactly parallel in format to amendatory sections of a bill. Each section simply announces that a specific provision of the constitution is amended "to read as follows," with the changes in the text indicated by underlining and bracketing as is done in a bill.

Although the constitutional rule against "blind amendment" is probably inapplicable to proposed constitutional amendments,[3] it is customary to draft proposed amendments as if the rule applied, reproducing at length the entire section or subsection to be amended. This practice makes the effect of a proposed amendment more obvious to the reader.

An amendatory section of a joint resolution appears as follows:

SECTION 1. Article VIII, Texas Constitution, is amended by adding Section 1-m to read as follows:

Sec. 1-m. The legislature by general law may authorize a taxing unit to grant an exemption or other relief from ad valorem taxes on property on which a water conservation initiative has been implemented.

[1]Section 35, Article III, Texas Constitution, by its own terms applies only to bills. The title rule is discussed in Section 3.03 of this manual.

[2]See Section 4.09 of this manual concerning the permissible breadth of a single proposed amendment.

[3]See Section 36, Article III, Texas Constitution, and Section 3.10(d) of this manual.

As is shown in this example, sections of the constitution do not have official headings, although unofficial headings are usually supplied in published versions.

SEC. 4.06. REPEALERS. A repealer in a joint resolution is exactly parallel to the repealer in a bill (see Section 3.11 of this manual). For example:

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      SECTION 3. Section 24, Article XVI, Texas Constitution,
   is repealed.
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SEC. 4.07. TEMPORARY PROVISIONS. (a) Introduction. Joint resolutions that have as their primary purpose the making of temporary changes in the constitution are rare. The processes of gaining legislative and voter approval of a constitutional amendment are usually seen as too daunting to make the joint resolution an attractive instrument for changes of intentionally limited duration. However, a drafter may want to consider including in a joint resolution a variety of temporary provisions, in addition to the submission clause (see Section 4.08), to accomplish the purpose of easing a constitutional change into effect.

(b) Placement in the constitution. Although temporary provisions in joint resolutions are similar in many ways to saving and transition provisions in bills, there are differences. The most obvious of these is their placement within the existing body of laws. A bill provision of only temporary significance ordinarily is not drafted as a direct amendment to an existing statute. As a freestanding provision, it usually is printed only in publications containing the texts of bills rather than compiled statutes or as a notation in a compilation of statutes following the text of the existing statute. Its terms are as forceful as those of any other part of a bill, but because it acts on the law for a limited time, it is not put in a place where it must continue to be printed as clutter after it has become obsolete.

The conventional wisdom is that *all* terms relating to the operation of a constitutional amendment once it is adopted must be prepared as amendments to the constitution. A reason for this belief is that constitutional provisions, being superior to other laws, cannot be qualified or explained according to terms that are in a document of lesser legal stature. Also, the voters, rather than the legislature, give effect to a constitutional amendment, and they vote literally to adopt what is termed on the ballot proposition an "amendment," not the whole resolution.

Excluded from this principle by common sense is the repealer, since it amends by *removing* language from the constitution rather than by adding to it.

Minimization of clutter is the reason a temporary provision inserted into the constitution needs to be self-destructing. Since the constitution is relatively difficult to change, a provision that is not of lasting significance could outlive its welcome in that document by many years if it does not prescribe its own removal.

It is sometimes possible to place temporary provisions in the constitution as severable parts of the permanent amendments; a subsection with its own expiration date is an example. When this is awkward or not feasible, a completely separate temporary provision is in order. The provision does not need to be put in a particular place in the constitution; in fact, it is desirable not to specify placement. The essential element is that the provision contain its own expiration date.

The form of a section proposing a temporary constitutional provision is as follows:

SECTION 2. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by H.J.R. No. 4, 81st Legislature, Regular Session, 2009.

(b) The amendment to Section 1-b(c), Article VIII, of this constitution takes effect January 1, 2010.

(c) This temporary provision expires January 2, 2010.

(c) Effective date. Section 1, Article XVII, Texas Constitution, states that an adopted amendment becomes part of the constitution, but doesn't specify when. The issue was before Texas courts as early as 1892. Their consistent interpretation has been that, unless otherwise clearly indicated, an amendment takes effect as part of the constitution on the date of the official canvass of returns showing adoption.[1] That date by law is not earlier than the 15th day or later than the 30th day after election day.[2]

The usual effective date of constitutional amendments is not appropriate for some types of amendments. If an amendment applies to a right or duty that should be exercised at specific times, such as the first day of a month or year, the terms of the amendment should become operational at those times. Of course, the amendment can contain a recital such as "beginning with the 2011 tax year" or "beginning with the report due for December 2010," but the cleaner procedure is to insert a separate section or subsection that provides a specific effective date. The provision should itself expire on a certain date. If the effective date is not included in the constitution, the drafter runs the risk that a court will determine that the usual date applies since that date was construed from the language of Section 1, Article XVII.

(d) "Self-enacting" clause. Occasionally, a constitutional amendment is proposed or adopted that declares itself to be "self-enacting" or "self-executing." A self-enacting or self-executing amendment is one that prescribes all details necessary for giving it effect without the need for implementing legislation. Drafters should not use the "self-enacting" clause because it is the prescribing of those necessary details that makes an amendment self-enacting, not the fact that the amendment describes itself as self-enacting. Even if an amendment describes itself in that way, the amendment is in fact *not* self-enacting and will not be so construed if it fails to describe those details.

(e) Validation of anticipatory legislation. The constitution contains random occurrences of a sentence substantially as follows:

> Should the legislature enact any enabling laws in anticipation of this amendment, no such law shall be void by reason of its anticipatory nature.

There is no legally sound basis on which to argue that "anticipatory legislation," the taking effect of which is conditioned on adoption of a constitutional amendment,[3] is void because of its "anticipatory nature." The clause is meaningless and should be avoided.

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[1] *Torres v. State,* 278 S.W.2d 853 (Tex. Crim. App. 1955); *Texas Water and Gas Co. v. City of Cleburne,* 21 S.W. 393 (Tex. Civ. App. 1892, no writ).

[2] Section 67.012, Election Code.

[3] See Section 3.14 of this manual for a discussion of effective dates for statutes contingent on the adoption of constitutional amendments.

SEC. 4.08. SUBMISSION CLAUSE. (a) Purpose of clause. The last section of a joint resolution proposing a constitutional amendment is the submission clause, the purpose of which is to specify the date of the election on the proposed amendment and the wording of the ballot proposition. The following standard form is used:

> SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held (DATE). The ballot shall be printed to permit [*or* "provide for"] voting for or against the proposition: "(WORDING OF BALLOT PROPOSITION)."

(b) Election date. In prescribing the mode by which the constitution is to be amended, Section 1, Article XVII, Texas Constitution, provides that "The date of the elections shall be specified by the Legislature."

It is, of course, the client's prerogative to decide the date of the election at which the amendment is to be submitted to the voters. If the client does not prefer a particular date, the general practice of the legislative council staff is to provide for submission of the amendment on the uniform election date in November, which is the first Tuesday after the first Monday in November. The drafter then must determine whether to use the November date in an odd-numbered year or an even-numbered year. For an amendment proposed in a regular session of the legislature, the November date in the same *odd-numbered year* as the regular session is the date most often used. An advantage of using that date is that it will result in a timely submission of the amendment to the voters. A disadvantage is that the date will result in a statewide special election on the proposed amendment since no other statewide election is ordinarily scheduled for that date. Section 7.86 lists the November election dates through 2020.

Occasionally, for an amendment proposed in a regular session of the legislature the uniform election date in November of the *even-numbered year* following the regular session is used. A disadvantage in using that date is that it will result in a delay in submitting the amendment to the voters. An advantage is that the date will preclude a special election by causing the amendment to be submitted on the date of the regular statewide general election.

A joint resolution proposing a constitutional amendment may be amended after introduction to provide a different election date if necessary. (When drafting such an amendment, the drafter should carefully review the rest of the resolution to determine whether other dates or provisions must be changed to conform to the changed election date.)

The legislature occasionally wishes to submit an amendment at the earliest possible date after passage of the resolution. Because of the time required to comply with the procedural requirements applicable to elections on proposed amendments, the earliest possible date on which such an election can be held under current election law is *about* 70 days after passage of the resolution, and that schedule can be met only if the secretary of state and attorney general act as quickly as possible in carrying out their constitutional duties relating to preparation and approval of an analysis of the proposed amendment.

(c) Ballot proposition. The ballot proposition should be a simple affirmative statement of the substance of the proposed amendment. Although attempts have been made to challenge a proposed constitutional amendment in court on the ground that the ballot proposition is inaccurate or misleading, such an attack has never succeeded. Courts

have held that the role of the ballot proposition is to identify a proposed amendment in a way that distinguishes it from the other proposed amendments on the ballot. This can be accomplished by language that shows the "character and purpose" of the amendment.[1] A ballot proposition does not need to contain a lengthy or exhaustive explanation of the effect of the amendment. Ideally, a ballot proposition should describe the proposed amendment accurately, concisely, and in plain English understandable by a typical voter. The degree of precision that may be needed in the amendment itself may be inappropriate on the ballot, and legal or technical jargon should be avoided as much as possible. These propositions, which appeared on past ballots, illustrate the type of wording a drafter should strive for:

> H.J.R. 48, 70th Legislature, Regular Session: "The constitutional amendment to limit school tax increases on the residence homestead of the surviving spouse of an elderly person if the surviving spouse is at least 55 years of age."
>
> S.J.R. 30, 78th Legislature, Regular Session: "The constitutional amendment relating to the provision of parks and recreation facilities by certain conservation and reclamation districts."
>
> H.J.R. 23, 78th Legislature, Regular Session: "The constitutional amendment permitting refinancing of a home equity loan with a reverse mortgage."
>
> H.J.R. 79, 79th Legislature, Regular Session: "The constitutional amendment authorizing the legislature to provide for a six-year term for a board member of a regional mobility authority."

SEC. 4.09. PERMISSIBLE SCOPE OF AMENDMENT. Section 1, Article XVII, Texas Constitution, does not mention the permissible scope of a single constitutional amendment. In practice, the legislature has interpreted this provision as vesting it with broad discretion concerning the scope of a single amendment. As long ago as 1891 the legislature by a single resolution proposed a wholesale revision of the entire judiciary article of the constitution, which was approved by the voters.

The only judicial interpretation of the permissible scope of a proposed amendment was a 1948 court of civil appeals case involving a 1947 amendment establishing a method for funding state college construction. Several arguments against the validity of the amendment were raised, including the argument that it contained several distinct proposals that should have been submitted to the voters as separate amendments. In overruling this contention, the court said:

> Art. 3, Sec. 35, of the Constitution provides that no legislative bill, except appropriation bills, shall contain more than one subject.
>
> Significantly, it seems to us, *there is no such limitation upon proposed amendments to the Constitution*. To limit a constitutional amendment to one subject would be to place a restriction upon the right of the legislature to propose and the people to adopt an amendment to the Constitution which is not contained in such document.[2] (Emphasis added.)

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[1] *Hill v. Evans,* 414 S.W.2d 684 (Tex. Civ. App.—Austin 1967, writ ref'd n.r.e.).

[2] *Whiteside v. Brown,* 214 S.W.2d 844 at 850 (Tex. Civ. App.—Austin 1948, writ dism'd).

Whether the legislature may, through the ordinary amendment process, propose a complete revision of the constitution as a single amendment is another question, one no Texas court has ever had to answer. The courts in other states are divided on the issue.[1]

In 1975 the legislature by a single resolution proposed a virtually complete revision of the constitution, but the revision was proposed as eight distinct amendments, each pertaining to a different part of the constitution, and each of which was ultimately defeated by the voters. The 1975 proposal was an attempt to salvage the work of the 1974 constitutional convention, authorized by a 1972 constitutional amendment. That convention, of which every member of the legislature was an ex officio member, although authorized to submit a proposed new constitution, was unable to obtain the two-thirds agreement required by the constitutional amendment providing for the convention.

The fact that the most recent attempt to submit a completely new constitution to the voters of Texas as a single proposal was through the 1974 constitutional convention, specifically authorized by a constitutional amendment, contributes to a widely held assumption that the legislature lacks authority under Section 1, Article XVII, to propose a new constitution as a single amendment. This assumption may well be wrong.

It is worth noting that the same legislature that proposed the amendment providing for the 1974 constitutional convention also proposed an amendment, adopted by the voters, to Section 1, Article XVII. The main purpose of that amendment was to authorize called sessions of the legislature to propose constitutional amendments, but the amendment also changed the wording of the first sentence of that section to expressly authorize the proposal of amendments "revising" the Texas Constitution.

In view of the specific constitutional authorization of amendments "revising" the constitution, the legislature's own broad construction of its amendment authority as evidenced by the 1891 complete revision of the judiciary article, and what the court of civil appeals had to say about the 1947 college funding amendment, it is difficult to argue for a restrictive interpretation of Section 1, Article XVII. That section undoubtedly permits the legislature to propose single amendments that are sweeping in scope, perhaps including even a complete revision of the constitution.

[1]See Braden et al., *The Texas Constitution: An Annotated and Comparative Analysis,* pp. 824–826.

CHAPTER 5
OTHER RESOLUTIONS

SEC. 5.01. INTRODUCTION. The resolution is the vehicle for a range of legislative and nonlegislative actions besides amendment of the Texas Constitution. This chapter discusses the principal parts of a resolution and the function of each (Sec. 5.02), then reviews the principal types of resolutions, other than resolutions to amend the state constitution, and their uses. These types, and the section of this chapter in which each is discussed, are:

- concurrent resolutions generally (Sec. 5.03)
- concurrent resolutions for permission to sue the state (Sec. 5.04)
- simple resolutions (Sec. 5.05)
- resolutions related to amendment of the United States Constitution (Sec. 5.06)
- member resolutions (Sec. 5.07)

SEC. 5.02. PARTS OF A RESOLUTION. (a) The heading. The heading of a joint, concurrent, or simple resolution is constructed in much the same manner as the heading of a bill. Member resolutions do not have a heading. The heading of a final draft of a **concurrent resolution** as it is delivered to the author appears as follows:

By: _____ __.C.R. No. _____

The heading of a final draft of a **simple resolution** appears as follows:

By: _____ H.R. No. _____

OR

By: _____ S.R. No. _____

The heading of a final draft of a **joint resolution** appears as follows:

By: _____ __.J.R. No. _____

(b) The title. Just after the heading of each resolution is a title, which simply identifies the document. The title of a concurrent resolution appears as follows:

CONCURRENT RESOLUTION

The title of a simple resolution or member resolution appears as follows:

R E S O L U T I O N

The title of a joint resolution, except one used to ratify an amendment to the U.S. Constitution (see Section 5.06(c)), to call for a U.S. constitutional convention (see Section 5.06(d)), or to amend the Texas Constitution (see Section 4.03), appears as follows:

A JOINT RESOLUTION

(c) The preamble. The preamble of a resolution supplies general information or arguments that give a reason for the action that is proposed in the resolution. A preamble is not a necessary part of a resolution but is often viewed as the most important because it provides a forum for presenting ideas and expressing sentiments. A preamble is not used in a resolution that:

- establishes or amends the rules of procedure of the legislature
- calls for sine die adjournment
- authorizes the adjournment of either house for more than three days
- proposes an amendment to the Texas Constitution

A preamble is drafted in this form:

> WHEREAS, Texas has a large number of laws relating to persons with handicapping conditions, and those laws are spread throughout the state's statutes; and
>
> WHEREAS, A compilation and explanation of those laws, including an index, cross-references, and notes on the purpose of this legislation, would be a useful tool not only for disabled individuals but also for agencies and organizations serving the disabled; now, therefore, be it
>
> [RESOLVED . . . .]

(d) General substantive provisions. The substantive provisions of a resolution may be classified into two major categories:

(1) the declaration of intention or adoption of a course of action; and

(2) subordinate provisions for carrying out the main intention or course of action.

General substantive provisions appear in this form:

> RESOLVED, That the 71st Legislature of the State of Texas hereby request the Texas Legislative Council to make a compilation of state laws relating to persons with disabilities that would include the text of all such laws, appropriate annotations, explanations, and a comprehensive index; and, be it further
>
> RESOLVED, That the council staff be authorized to request the assistance of private organizations, state agencies, and knowledgeable individuals as needed in the discharge of its duties relating to this project.

The examples above follow the traditional practices of capitalizing "WHEREAS" and "RESOLVED" for emphasis, capitalizing the first letter of each word immediately following "WHEREAS" or "RESOLVED," and constructing the resolution as a single complex sentence.

SEC. 5.03. CONCURRENT RESOLUTIONS. (a) Introduction. A concurrent resolution must be adopted by both houses of the legislature and deals with a matter that is of interest to the entire legislature. Because this type of resolution requires the concurrence of both houses, it usually must be presented to the governor for signing before it can take effect.[1] Either house may initiate a resolution to be concurred in by the other house. A concurrent resolution must be used to:

- establish or amend the joint rules of procedure of the legislature
- designate an official state symbol
- adopt an official place designation
- authorize a joint session of the legislature
- instruct the enrolling clerk of the applicable house to make minor clerical corrections on enrollment of a bill or resolution that has passed both houses
- authorize adjournment of either or both houses for more than three days
- provide for sine die adjournment of the legislature

Either a concurrent resolution or a simple resolution may be used to:

- recognize a group or individual, commemorate a special occasion, welcome or invite a distinguished guest, or pay tribute to the life of a deceased individual
- endorse a policy, position, or course of action
- petition or memorialize the U.S. Congress, the president, or other persons or entities in the federal government, expressing an opinion or requesting action
- direct a state agency, commission, or board to take an action

(b) Corrective resolutions. Concurrent resolutions instructing the enrolling clerk of the applicable house to make corrections on enrollment of a bill or resolution are customarily known as corrective resolutions. Grammatical, technical, and typographical errors are the types of mistakes this form of resolution is most commonly used to correct. In writing directions to the enrolling clerk, the drafter should follow the conventions used in the drafting of committee and floor amendments described in Section 6.03. Corrective resolutions should originate in the chamber of origin of the bill being corrected and should instruct the enrolling clerk of that chamber to make the corrections. The following is an example of a corrective resolution for a house bill:

By: _____ __.C.R. No. ____

CONCURRENT RESOLUTION

WHEREAS, House Bill No. 1483 has been adopted by the house of representatives and the senate; and

[1]Section 15, Article IV, Texas Constitution, expressly excepts from this requirement resolutions on questions of adjournment. Precedent has also excepted resolutions about purely internal concerns of the legislature, such as resolutions adopting joint rules.

WHEREAS, The bill contains technical and typographical errors that should be corrected; now, therefore, be it

RESOLVED, That the enrolling clerk of the house of representatives be instructed to make the following corrections:

(1) In SECTION 1 of the bill, in added Section 551.125(b)(1), Government Code, strike "meeting" and substitute "meaning".

(2) In SECTION 6 of the bill, in amended Section 2308.314(a), Government Code, strike "[~~the committee~~]" and substitute "the [~~committee~~]".

(3) Strike SECTION 22 of the bill and substitute the following:

SECTION 22. Section 13.156, Education Code, is repealed.

SEC. 5.04. CONCURRENT RESOLUTIONS GRANTING PERMISSION TO SUE STATE. **(a) Introduction.** For centuries the doctrine of sovereign immunity, common to some degree among all recorded systems of law, shielded government from accountability for torts it committed against private individuals or entities. Courts and statutes have created doctrinal exceptions through which recovery against the government is possible,[1] but the state and, to a lesser extent, its subdivisions are still immune from liability in many circumstances. The legislature by statute may waive immunity from liability and by statute or resolution waive immunity from suit in cases in which the state is alleged to be liable. It is with immunity from suit that this section is concerned.

A drafter who does not specialize in preparing resolutions granting the state's permission to be sued probably cannot give a client advice about the possibilities for recovery in a particular instance but should be generally familiar with the types of provisions that can be effectively included in a resolution granting permission to sue.[2]

(b) Form of permission. The usual legislative vehicle for grants of permission to sue the state is a concurrent resolution (although permission also may be given by special law). A concurrent resolution is preferred because it can take effect immediately on the governor's signature without the two-thirds vote required for a bill to take immediate effect.[3]

Chapter 107, Civil Practice and Remedies Code, provides general rules applicable to all resolutions granting permission to sue the state.

(c) Effect of permission. The only effect of a legislative grant of permission to sue the state is a waiver of the state's immunity from suit. This is true whether or not the resolution recites a reservation of defenses.[4] Several cases have held that it is a violation of Section 3,

[1]See, for example, Chapters 101 and 104, Civil Practice and Remedies Code. Chapter 101 expressly waives immunity from suit as well as immunity from liability; therefore, no further legislative permission is required in a circumstance to which that chapter applies.

[2]For a discussion of the scope of the state's liability, see 55 Tex. L. Rev. 719 (1977).

[3]A drafter contemplating preparing a special bill granting permission to sue the state needs to be aware of the constitutional restrictions on special laws provided by Section 56, Article III, Texas Constitution, and judicial decisions construing that section.

[4]See, for example, *State v. McKinney,* 76 S.W.2d 556 (Tex. Civ. App.—Beaumont 1934, no writ), and *State v. Brannan,* 111 S.W.2d 347 (Tex. Civ. App.—Waco 1937, writ ref'd).

Article I, Texas Constitution, for the state to waive immunity from *liability* in a specific suit because it results in granting to the beneficiary of the waiver a right that others do not have.[1]

Section 107.002, Civil Practice and Remedies Code, establishes the effect of permission granted by resolution. A resolution may not alter the effect of the permission described by that section but may further limit the available relief.

(d) Strict construction of grant of permission. Courts have stated that laws in derogation of the state's sovereignty are to be strictly construed, but this typically has resulted only in producing determinations that grants of permission are not effective to waive liability. A grant will not be narrowly or technically construed to deny a suit.[2]

A statement of facts, included in a resolution, that indicates a cause of action probably will support any cause of action arising out of those facts. However, at least one court has stated in dictum "the suit must follow the clear intent of the Legislature expressed in the resolution."[3] For this reason, it is probably the better practice to avoid the potential problem by *not* stating the theory of recovery in the resolution but rather stating only the facts, that the claimant alleges that the state is liable, and that the claimant is authorized to bring suit for whatever relief to which the claimant may be entitled based on those facts.

(e) Conditions on bringing suit. Section 107.002, Civil Practice and Remedies Code, imposes the general conditions on bringing a suit against the state. However, under Section 107.004, the resolution granting permission to sue may impose additional conditions on the bringing of the suit.[4] The most common condition imposed is the specifying of the county in which the suit may be brought. This becomes a jurisdictional, not venue, requirement; therefore, the county designated may be a county in which the suit could not properly be maintained under the general venue statute (under which venue is not a jurisdictional requirement).

Under Section 107.002(a)(2), Civil Practice and Remedies Code, the suit must be filed before the second anniversary of the effective date of the resolution. The resolution may provide for a shorter filing period. Although either filing period may be shorter than is provided under the statute of limitations,[5] a resolution may not extend the statutory limit in a particular case.[6] It is important to remember that when legislative permission is required for a suit against the state, the statute of limitations does not begin to run until permission to sue takes effect (although the equitable doctrine of laches may bar some old claims).

When permission to sue the state is granted by resolution, the state is subject to rules of evidence and procedure to the same extent as any other litigant in a particular circumstance, regardless of any recitation that might appear in the resolution.[7]

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[1]*Matkins v. State,* 123 S.W.2d 953 (Tex. Civ. App.—Beaumont 1939, writ dism'd, judgm't correct); *State Highway Department v. Gorham,* 162 S.W.2d 934 (Tex. 1942); *Martin v. Sheppard,* 201 S.W.2d 810 (Tex. 1947).

[2]*State v. Hale,* 146 S.W.2d 731 (Tex. 1941); *Commercial Standard Fire and Marine Co. v. Commissioner of Insurance,* 429 S.W.2d 930 (Tex. Civ. App.—Austin 1968, no writ).

[3]*State v. Lindley,* 133 S.W.2d 802, 805 (Tex. Civ. App.—Dallas 1939, writ dism'd, judgm't correct).

[4]*Martin v. State,* 75 S.W.2d 950 (Tex. Civ. App.—El Paso 1934, no writ).

[5]*Texas Mexican Railway Co. v. Jarvis,* 15 S.W. 1089 (Tex. 1891); *State v. Williams,* 326 S.W.2d 551 (Tex. Civ. App.—Austin 1959), *rev'd on other grounds*, 335 S.W.2d 834 (Tex. 1960).

[6]*Buford v. State,* 322 S.W.2d 366 (Tex. Civ. App.—Austin, writ ref'd n.r.e.), *cert. denied*, 361 U.S. 837, 80 S. Ct. 89 (1959).

[7]*State v. Stanolind Oil and Gas Co.,* 190 S.W.2d 510 (Tex. Civ. App.—Beaumont 1945, writ ref'd); *Texas Department of Corrections v. Herring,* 513 S.W.2d 6 (Tex.), *aff'd*, 513 S.W.2d 6 (Tex. 1974); *State v. Jasco Aluminum Products Corp.,* 421 S.W.2d 409 (Tex. Civ. App.—Austin 1967, no writ).

(f) Form of resolution. The following form is used for resolutions granting permission to sue the state:[1]

By: _____ __.C.R. No. _____

CONCURRENT RESOLUTION

WHEREAS, _____ alleges that:

(1) _____ ; and

(2) _____ ;

now, therefore, be it

RESOLVED by the Legislature of the State of Texas,

That_____

(is)(are) granted permission to sue the State of Texas

and_____

subject to Chapter 107, Civil Practice and Remedies Code; and, be it further

RESOLVED, That the _____

be served process as provided by Section 107.002(a)(3), Civil Practice and Remedies Code.

SEC. 5.05. SIMPLE RESOLUTIONS. A simple resolution is voted on only by the house in which it is introduced and is not sent to the governor for signing. The effect of its adoption does not go beyond the bounds and the authority of the house that acts on it. A simple resolution is used to:

- establish or amend the rules of procedure or administrative and budgetary policies of a single house
- initiate a study by a single house
- name a mascot

Either a simple resolution or a concurrent resolution may be used to:

- recognize a group or individual, commemorate a special occasion, welcome or invite a distinguished guest, or pay tribute to the life of a deceased individual
- endorse a policy, position, or course of action
- petition or memorialize the United States Congress, the president, or other persons or entities in the federal government, expressing an opinion or requesting an action
- direct a state agency, commission, or board to take an action

[1]A drafter may want to add to the form desired limiting conditions (see Subsection (e)).

SEC. 5.06. RESOLUTIONS RELATING TO AMENDMENT OF UNITED STATES CONSTITUTION. (a) Categories. There are three categories of resolutions relating to amendment of the United States Constitution:

(1) resolutions memorializing or petitioning the congress to propose an amendment;

(2) resolutions requesting that the congress call a convention for proposing amendments; and

(3) resolutions ratifying an amendment that has been proposed by the congress.

A resolution that memorializes the congress to propose an amendment is a simple expression of opinion and, as such, may be a simple or concurrent resolution that is subject to the ordinary rules for those resolutions. Although it is not binding on the congress as is a resolution calling for a constitutional convention that is adopted by the required number of states, a resolution memorializing or petitioning the congress is used much more frequently than a resolution calling for a convention because a convention, once convened, almost certainly is not restricted to the purpose for which it was called.

Because the United States Constitution provides that the state legislature alone shall apply to the congress to call a constitutional convention or ratify a proposed amendment, a resolution that performs one of those actions is not subject to the governor's approval and does not have to be included as a subject in the governor's call for a special session.

(b) Nomenclature. The rules of procedure of the house of representatives call for the designation of a resolution ratifying a proposed amendment as a "joint" resolution, rather than a concurrent resolution. The state constitution is silent on the subject. To eliminate confusion and facilitate the processing of these resolutions, the designation "joint resolution," which in the past has been the usual, but not exclusive, designation, should be consistently used to distinguish these resolutions from those that are subject to the governor's approval. A resolution that simply memorializes the congress, and therefore is subject to gubernatorial approval, should be designated as a "concurrent resolution."

(c) Resolution to ratify an amendment. A joint resolution to ratify a proposed amendment to the United States Constitution requires a caption that identifies its specific purpose. The caption for this type of resolution is drafted as follows:

```
A JOINT RESOLUTION

ratifying a proposed amendment to the Constitution of
the United States providing for representation of the
District of Columbia in the United States Congress.
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When preparing a resolution to ratify an amendment to the United States Constitution, a drafter should consider including the text of the proposed amendment in the resolution. The practice is not mandatory but is a convenient way of providing to the legislators information that may help determine votes on the resolution. Some ratification resolutions have included the entire text of the congressional resolution proposing the amendment. This is informational when the congress specifies ratification deadlines or other procedural details for legislative actions.[1]

[1]For an example of a ratification resolution that includes the text of the congressional resolution proposing the amendment, see S.C.R. 1, Acts of the 62nd Legislature, 2nd Called Session, 1972.

(d) Resolution to call a convention. A joint resolution to call for a convention to amend the United States Constitution requires a caption identifying its specific purpose but otherwise follows the normal resolution format of preamble and substantive provisions. The caption for a resolution of this type appears as follows:

A JOINT RESOLUTION

applying to the Congress of the United States for a convention to amend the United States Constitution to provide for representation of the District of Columbia in the United States Congress.

SEC. 5.07. MEMBER RESOLUTIONS. This type of resolution is often used to convey congratulations or condolences to individuals or groups. Member resolutions are not introduced or acted on by the legislature, so they have only a signature line for the requesting legislator. Because member resolutions express the sentiments of an individual legislator and not the house or senate, they cannot effect legislative action. For this reason, a member resolution cannot "proclaim" or "designate," but it can "recognize" or "honor."

CHAPTER 6
AMENDMENTS, SUBSTITUTES, AND CONFERENCE COMMITTEE REPORTS

SEC. 6.01. INTRODUCTION. The type of **amendment** discussed in this chapter is one that proposes to change the text of a bill or resolution during its consideration by the legislature, as opposed to the amendment of a statute or the constitution.[1]

A **substitute** is a type of amendment that is offered as an alternative to something else. A complete substitute for a bill or resolution is an alternative version of the whole bill or resolution. It is called a **committee substitute** if adopted by a committee, or a **floor substitute** if offered on the floor by an individual member. An amendment to only part of a bill or resolution can also be a substitute if it is offered as an alternative to another amendment under consideration, either in committee or on the floor. The drafting of this latter type of substitute is not specifically addressed in this chapter because it is drafted exactly the same as any other simple amendment, achieving its status as a substitute not by how it is drafted but by how it is offered.

A **conference committee report**, as its name indicates, is the product of a conference committee, which is a joint committee appointed by the lieutenant governor and speaker of the house to resolve matters in disagreement between the two houses on a bill or resolution. Like an ordinary committee substitute, it consists of a complete version of the bill or resolution.

The drafting of these various types of documents is addressed in the remainder of this chapter following a discussion of germaneness, a constitutional and parliamentary rule that limits the range of amendments that may be made to a legislative document.

SEC. 6.02. GERMANENESS. The essence of the germaneness rule is that a bill or resolution may not be amended by an amendment on a different subject. House of Representatives Rule 11, Section 2,[2] provides:

> No motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate. "Proposition" as used in this section shall include a bill, resolution, joint resolution, or any other motion which is amendable.
>
> Amendments pertaining to the organization, powers, regulation, and management of the agency, commission, or advisory committee under consideration are germane to bills extending state agencies, commissions, or advisory committees under the provisions of the Texas Sunset Act . . . .

Senate Rule 7.15 is substantially identical to the first sentence of the house rule.

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[1]Parts of a bill that propose to amend a statute and parts of a joint resolution that propose to amend the constitution are discussed in Chapters 3 and 4 of this manual, respectively.

[2]All references in this chapter to legislative rules are to house and senate rules for the 80th Legislature.

In addition, Section 30, Article III, Texas Constitution, provides that "no bill shall be so amended in its passage through either House, as to change its original purpose."[1]

The subject or original purpose of a bill is determined by the body of the bill, notwithstanding the common notion that the caption controls in these matters. Although the caption, to the extent it fulfills its constitutional function, indicates what a bill is about, a "broad" caption does not broaden the range of possible amendments, nor does a "narrow" caption restrict the range.

Another common misconception is that the amendment of an existing law by a bill necessarily opens the existing law to any amendment by way of that bill that would be germane to the subject of the *law.* Germaneness to existing law of a proposed amendment or substitute is beside the point; the proposed amendment or substitute must be germane to the subject or purpose of the pending *bill.*[2]

What matters is whether the text of the bill shows an intent to deal comprehensively with a broad subject or an intent to deal with only a specific, narrow subject. An omnibus tax bill, for example, may be a proper host for a broad variety of amendments dealing with almost any aspect of state taxation, but an amendment to change the rate of the sales tax would probably not be germane to a bill dealing only with the allocation of cigarette tax revenue.

It is the responsibility of the presiding officer of the senate or house of representatives, or of the chair of a committee as to legislation in committee, to rule on a point of order raised under the germaneness rule or Section 30, Article III, Texas Constitution.

A drafter is not expected to give definitive advice about the germaneness of a particular amendment a member asks to have drafted, but should know at least enough about the subject to advise a member when a possible germaneness problem exists. Careful review of the house and senate precedents in the *Texas Legislative Manual* is helpful for this purpose. As such a review will show, there are so many close cases that are clearly "judgment calls" that it is foolish to attempt to give categorical opinions on specific germaneness questions.

In deciding whether to proceed with an amendment of doubtful germaneness, a member will probably wish to consider the consequences of an adverse ruling. If a point of order is sustained, the amendment is dead. For a simple floor or committee amendment, the risk may be worth taking, but an adverse germaneness ruling on a committee substitute is a different matter. Particularly toward the end of a session, a ruling on the floor that a committee substitute is not germane is often equivalent to killing the bill or resolution itself.

In the senate, when a committee reports a complete substitute, the original bill or resolution is "dead," according to Senate Rule 7.11, unless reported according to the procedures applicable to a minority report. If a committee substitute is killed on the floor by a point of order, the original bill or resolution does not automatically become eligible for consideration.

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[1]This constitutional rule is repeated as Rule 11, Section 3, of the house of representatives and is cited as a reference at the end of Rule 7.15 of the senate.

[2]A house precedent containing a general statement on germaneness, including a remark about the standard against which germaneness is measured, is found on page 1733 of the house journal for the 58th Legislature, Regular Session, 1963.

In the house of representatives, Rule 4, Section 41, provides:

> If a point of order is raised that a complete committee substitute is not germane, in whole or in part, and the point of order is sustained, the committee substitute shall be returned to the Committee on Calendars, which may have the original bill printed and distributed and placed on a calendar in lieu of the substitute or may return the original bill to the committee from which it was reported for further action.

In either the house or the senate, the sustaining of a germaneness point against a committee substitute late in the session may effectively kill the affected bill because there is not enough time left for its resurrection.

Rulings on germaneness or Section 30, Article III, of the constitution are shielded from judicial review by the enrolled bill rule.[1] So even if an ungermane amendment becomes a part of an act, the validity of the act is not in jeopardy *unless* (and this is a big "unless") the amendment results in a violation of the constitutional one-subject rule (Section 35, Article III, Texas Constitution), compliance with which is not covered by the enrolled bill rule.

SEC. 6.03. COMMITTEE AND FLOOR AMENDMENTS. The constitutional rule against amendment by reference[2] applies only to the amendment of a statute by an act, not to the amendment of a bill during the legislative process. It is entirely permissible, and indeed customary, to draft floor and committee amendments that merely specify how the text of a bill or resolution is to be changed, without setting out the entire text of the affected section.

The only formal difference between a floor and committee amendment for either house is the heading.

A **floor amendment** is headed as follows:

FLOOR AMENDMENT NO. _____ BY: _____

The draft amendment is delivered to the client with the lines left blank. The legislator offering the amendment signs it after "BY," and an officer of the senate or house enters an amendment number at the time the amendment is considered.

A **committee amendment** is headed as follows:

COMMITTEE AMENDMENT NO. _____ BY: _____

As with a floor amendment, the legislator offering the amendment signs on the "BY" line. The first line is filled in with an appropriate number by an employee of the committee if the amendment is adopted.

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[1]See, for example, *Parshall v. State,* 138 S.W. 759 (Tex. Crim. App. 1911).

[2]See Section 3.10(d) of this manual.

After the heading, there is a recital that a specific legislative document is to be amended, followed by a precise explanation of the amendment. The drafter must take care to draft the amendment to the version of the document that is to be under consideration when the amendment is offered. More specifically:

IF THE AMENDMENT IS TO BE OFFERED:	IT SHOULD BE DRAWN TO:
In committee in the house of origin	The introduced bill
In committee in the other house	The engrossment from the house of origin (the version as passed from the house of origin)
On second reading in either house	The version as reported from committee in that house
On third reading in the senate	The version considered on second reading, as amended[1] (procedure is the same for either a senate or a house bill)
On third reading in the house	In the case of a house bill, the second reading engrossment;[2] in the case of a senate bill, the procedure is the same as a third reading amendment in the senate

To draft an amendment, it is first necessary to examine the bill or resolution to be amended and, considering the substantive result desired, determine exactly how the text must be changed. Unless the amendment is very simple, it is advisable to actually mark up the text with whatever changes are required and use the marked-up text as a guide for drafting the amendment. An amendment is, in effect, instructions to the officer of the house or senate responsible for enrolling and engrossing, stating precisely in what respects the text of the bill or resolution is to be changed.[3] This manual describes drafting conventions that the council employs for clarity and precision in setting out instructions that the members and enrolling clerks can easily follow.

The text of any amendment may be introduced by the phrase “Amend (name of document) as follows:”, with the specific instructions following directly and, if more than one change is to be made, listed in order of appearance.

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[1]If an amendment was adopted on second reading, it may be necessary to refer to the amendment in identifying the text to be amended on third reading.

[2]Occasionally, engrossed riders are printed in lieu of a second reading engrossment. When this occurs, the bill or an engrossed rider, as appropriate, is amended.

[3]A point of order may be sustained against consideration of an amendment on the ground that it is indefinite: that is, that it does not clearly state how the text (as opposed to effect) of the measure is to be changed. See, for example, page 52 of the house journal for the 41st Legislature, 4th Called Session, 1930.

A certain vocabulary has evolved for drafting amendments. The following terms are preferable to any synonyms because their meaning is clear and participants in the legislative process are accustomed to them:

insert	used to provide for the addition of text between two points, as "between 'bananas,' and 'oranges,' insert 'apples,'" or "on page 14, between lines 14 and 15, insert the following:"
add	used to add text at the end of a section or other unit, as "at the end of SECTION 4, add 'This section does not apply to retired members.'"
strike	used to delete text, as "strike SECTION 2" or "on page 8, strike lines 14–19."
strike and substitute	to delete something and put something else in its place, as "strike 'collies' and substitute 'bulldogs'."

Most legislative documents have both page and line numbers to facilitate reference to specific text. If lines are not numbered, the drafter must use some other point of reference, such as "the third sentence of SECTION 4." It should be noted that a reference to a specific section of an *amendatory* bill or joint resolution can be ambiguous because there may be sections of the bill or resolution with section numbers identical to sections of law being amended. If the potential for ambiguity or confusion exists, reference to a section should be qualified. For example, the reference may be to "SECTION 5 of the bill" or, if to a section of law set out for amendment, to "amended Section 11.004, Health and Safety Code, in SECTION 18 of the bill."

In drafting amendments for the house of representatives, the council staff generally prefers to complete the description of the location of the amendment before describing the action to be taken. This pattern enhances quick understanding of the amendment. For example:

WRITE

On page 3, line 22, between "go" and "away", insert "far".

DO NOT WRITE

On page 3, line 22, insert "far" between "go" and "away".

OR

Insert "far" between "go" and "away" on page 3, line 22.

OR

Between "go" and "away" on page 3, line 22, insert "far".

Of course, if a certain formulation makes the preferred pattern unreasonable and convoluted, the drafter should deviate from the pattern in that situation.

Because of the senate's distinct committee report form, which is single-spaced, the officers of the **senate** prefer that committee and floor amendments drafted for use in the senate **begin the instructions with a reference to the appropriate section** of the bill or section of amended law, as applicable. A reference to a page and line number should follow in parentheses, and the version of the document referred to should be identified. For example:

FLOOR AMENDMENT NO. _____ BY: _____

Amend C.S.S.B. 897, in SECTION 3 of the bill (senate committee report page 12, lines 65-69), by striking Subsection (e).

COMMITTEE AMENDMENT NO. _____ BY: _____

Amend S.B. 14 (introduced version) as follows:

(1) In SECTION 1 of the bill, in added Section 25.002(b)(2)(A), Finance Code (page 1, line 16), strike "commission" and substitute "department".

(2) In SECTION 2 of the bill, in the introductory language (page 1, line 25), strike "adding Subsection (n)" and substitute "adding Subsections (m) and (n)".

(3) In SECTION 2 of the bill, in amended Section 25.2292, Government Code (page 2, between lines 9 and 10), insert the following:

(n) The court does not have jurisdiction in civil cases in which the amount in controversy exceeds the limit prescribed by Section 25.0003(c)(1).

FLOOR AMENDMENT NO. _____ BY: _____

Amend S.B. 457 (house committee report) in SECTION 1 of the bill, in amended Section 615.0225(a), Government Code, as follows:

(1) On page 1, line 10, strike "or" and substitute "[~~or~~]".

(2) On page 1, line 12, strike "615.001" and substitute "615.001; or

(4) a state agency".

FLOOR AMENDMENT NO. _____ BY: _____

Amend C.S.S.B. 1788 (senate committee report) in SECTION 1 of the bill, in added Section 30.103, Education Code (page 4, between lines 60 and 61), by inserting the following new Subsection (c) and relettering the subsequent subsections of added Section 30.103, Education Code, accordingly:

(c) The criteria must satisfy applicable requirements under Subchapter M, Chapter 2054, Government Code.

FLOOR AMENDMENT NO. _____ BY: _____

Amend S.B. 943 (house committee report) as follows:

(1) Strike SECTION 8 of the bill, adding Sections 431.4101 and 431.4102, Health and Safety Code (page 12, line 22, through page 13, line 5).

(2) In the recital to SECTION 9 of the bill (page 13, lines 7 and 8), strike "adding Subsections (a-1), (a-2), and (e)" and substitute "adding Subsections (a-1) and (a-2)".

(3) In SECTION 9 of the bill (page 13, lines 9-15), strike amended Section 431.411(a), Health and Safety Code, and substitute the following:

(a) A distributor shall receive returns or exchanges from a pharmacy or [~~chain~~] pharmacy warehouse in accordance with the terms of the agreement between the distributor and the pharmacy or [~~chain~~] pharmacy warehouse.

(4) In SECTION 9 of the bill (page 14, line 20, through page 15, line 5), strike added Section 431.411(e), Health and Safety Code.

(5) Renumber SECTIONS of the bill appropriately.

Because senate enrolling staff incorporates house amendments to senate bills, a drafter should generally use senate floor amendment style in preparing those amendments.

The following examples provide guidance in the drafting of amendments for the house. The same principles apply to senate floor and committee amendments, but the order of instructions for those documents should conform with the order given in the above examples.

EXAMPLE 1. Committee amendment to delete an entire sentence:

COMMITTEE AMENDMENT NO. _____ BY: _____

Amend S.J.R. 18 by striking the sentence that begins on page 4, line 17.

EXAMPLE 2. Floor amendment to a committee substitute to substitute a phrase and add a sentence:

FLOOR AMENDMENT NO. _____ BY: _____

Amend C.S.H.B. 49 as follows:

(1) On page 3, line 12, strike "within fifteen days of" and substitute "not later than the 20th day after".

(2) On page 4, line 16, between the period and "<u>The</u>", insert "<u>The application must be in writing.</u>"

EXAMPLE 3. Floor amendment to strike one section of a bill and part of another:

FLOOR AMENDMENT NO. _____ BY: _____

Amend S.B. 592 as follows:

(1) Strike SECTION 5 of the bill and renumber the subsequent sections appropriately.

(2) Strike the last sentence of SECTION 6 of the bill.

EXAMPLE 4. Floor amendment to a committee amendment:

FLOOR AMENDMENT NO. _____ BY: _____

Amend Committee Amendment No. 4 to S.B. 399, on page 14, line 7, by striking "$25" and substituting "$50".

EXAMPLE 5. Floor amendment to another floor amendment:

FLOOR AMENDMENT NO. _____ BY: _____

Amend the Smith amendment[1] to C.S.H.B. 4, in the first sentence of proposed Section 34.003, Government Code, by striking "constable" and substituting "peace officer".

EXAMPLE 6. Floor amendment to a floor substitute:

FLOOR AMENDMENT NO. _____ BY: _____

Amend the proposed floor substitute[2] to S.B. 234 by striking SECTIONS 7-14 and renumbering the subsequent sections appropriately.

Part of the text of Example 2 is underlined. The underlining and bracketing rules of the house of representatives and senate[3] apply to committee amendments and substitutes, and it is customary to prepare all amendments and substitutes to conform to those requirements. Material should be underlined or bracketed in an amendment or substitute if the material is an amendment to existing law; that is, if it would have been underlined or bracketed if included in the original bill or resolution. Underlining or bracketing is *not* used for the purpose of indicating changes between the amendment or substitute and the text of the original bill or resolution.

Contrary to ordinary rules of punctuation, the sentence-ending period in Examples 2, 4, and 5 is placed *outside* the quoted material. Amendments and substitutes to bills and resolutions are read literally, and a punctuation mark should be included inside quotation marks only if it is part of the text affected by the amendment.

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[1]A pending floor amendment may be identified, among other ways, by the name of the author. Since only one amendment can be pending at a time, this identification is unambiguous.

[2]It is unambiguous for a pending floor substitute to be so identified, since only one substitute may be pending at any one time.

[3]See Section 3.10(g) of this manual.

Drafters are sometimes confused by the effect of an instruction to renumber sections, as is provided in Examples 3 and 6. If one paragraph of an amendment provides for renumbering Sections 8–14, should another paragraph of the same amendment refer to one of the renumbered sections by its "old" or "new" number? Reference should be to the "old" number because the renumbering does not occur until the bill is actually engrossed or enrolled, as the case may be, which occurs after all amendments have been considered and the bill passes to the next step of the legislative process. Even if an amendment that renumbers Section 9 as Section 10 is adopted, subsequent amendments at the same reading should continue to refer to the section as Section 9.

A final word about renumbering sections: It is not necessary that a committee or floor amendment specify exactly how sections are to be renumbered, or even that they will be renumbered; the enrolling and engrossing staff will take care of necessary renumbering without being told to do so. Still, it tends to reduce confusion if an amendment that will require renumbering at least recites "renumber the subsequent sections appropriately" or something to that effect.

In drafting amendments, drafters should keep in mind that clarity and precision must be balanced with ease of understanding. For example, it may be clearer to strike a sentence in its entirety and provide a substitute instead of making numerous individual word changes. Even though an amendment may be precise, it may be confusing for the members and clerks to attempt to follow a puzzle-like set of instructions. Drafting amendments, like drafting a bill, is not a mechanical function. Common sense and judgment are as important as technical compliance with drafting conventions developed to provide order and consistency to the process.

SEC. 6.04. COMMITTEE AND FLOOR SUBSTITUTES. A committee or floor substitute is simply an alternative version of a bill, a resolution, or a committee or floor amendment to an amendment.

The only difference in form between a committee substitute and a bill is the heading. The heading of a **committee substitute for a bill**, as delivered to the client, appears as follows:

By: _____ __.B. No. _____

Substitute the following for __.B. No. _____:

By: _____ C.S.__.B. No. _____

A BILL TO BE ENTITLED

AN ACT

The heading of a **committee substitute for a joint resolution**, as delivered to the client, appears as follows:

By: _____ __.J.R. No. _____

Substitute the following for __.J.R. No. _____:

By: _____ C.S.__.J.R. No. _____

A JOINT RESOLUTION

The document continues in exactly the same form as a bill or joint resolution. The committee member who offers the substitute fills in the blanks with the author, number, and house of origin of the affected bill or resolution and signs on the line following the second "By."

Because it is customary in the senate, and mandatory in the house of representatives,[1] to defer consideration of a caption amendment until all amendments to the body of a bill have been considered, a **floor substitute** amends the body of a bill but not its caption. The heading of a floor substitute is identical to the heading of a floor amendment, and the amendment is to "strike all below the enacting clause and substitute the following:", followed by the entire text of the bill, beginning with Section 1. If the caption also needs to be changed, a second amendment may be included to "strike all above the enacting clause and substitute the following:". The more commonly used alternative procedure to drafting a caption amendment is for a member to move, after adoption of the floor substitute, to "amend the caption to conform to the body," in which event the enrolling and engrossing staff of the house or senate will draft an appropriate caption.

Because joint resolutions are drafted and considered much the same way as bills, a floor substitute for a joint resolution generally is drafted in the same way as a floor substitute for a bill. But since simple and concurrent resolutions do not have captions (other than the descriptions printed on the backing), a floor substitute for one of them may merely provide for amending the resolution "to read as follows:", followed by the entire new text and with only the heading omitted.

Amendments to floor and committee amendments take the forms described in Section 6.03, but an amendment to an amendment to an amendment takes the form of a floor substitute:

FLOOR AMENDMENT NO._____ BY:_____

Substitute the following for the Jones amendment to C.S.H.B. 4:

[1]This requirement appears in House of Representatives Rule 11, Section 9(a).

SEC. 6.05. CONFERENCE COMMITTEE REPORTS. A conference committee report, like a committee substitute, consists of an entire version of the affected bill or resolution, the only formal difference being a slightly different heading, in which the title "Conference Committee Report" appears at the top of the page and the author's name is deleted.[1] For example:

CONFERENCE COMMITTEE REPORT

H.B. No. 25

A BILL TO BE ENTITLED

AN ACT

relating to . . . .

While the form of a conference committee report is simple enough, compliance with procedural rules governing the content of the report is a different matter. Rules of both houses[2] limit the discussions and actions of conference committees to "matters in disagreement" between the house and senate versions of the bill or resolution. This means, in general, that text that is the same in both house and senate versions may not be changed or deleted, and substance that is in neither bill may not be added. Where there is disagreement between versions, there is a certain amount of leeway. For example, if one version proposes a tax at the rate of three percent and the other version proposes the same tax but at a rate of six percent, the conference committee may set the rate at three or six percent or anywhere in between. On the other hand, if a tax appears in only one version, the conference committee may delete the tax, include the tax at the rate proposed, or include the tax at a lower rate, but may not include the tax at a higher rate. While it is not a drafter's responsibility to make a definitive determination about whether a proposed conference committee report complies with applicable rules of procedure, the drafter should generally understand these rules to be able to alert a client when a problem appears to exist.[3]

A conference committee report is presented to each house for adoption or rejection on a "take-it-or-leave-it" basis. *It is not amendable.*

[1]The rationale for deletion of the author's name is that the conference committee is the author of a conference committee report.

[2]Rule 12.03 of the senate and Rule 13, Section 9, of the house of representatives.

[3]Rules limiting jurisdiction of a conference committee, like other procedural rules, may be suspended. See Rule 13, Section 9(f), of the house of representatives and Section 12.08 of the senate rules for suspension procedures.

SEC. 6.06. SIDE-BY-SIDE ANALYSES. (a) Purpose. The purpose of the side-by-side analysis is to enable legislators to compare the bill sections that are in disagreement in the senate and house versions and to see how the conference committee resolved the disagreements.

(b) Rules requirements. The rules of the house and the senate[1] require that a conference committee report include an analysis of the differences among the senate, house, and conference committee versions of a bill. The rules of the senate further require the analysis to be a section-by-section analysis that, for each section in disagreement, shows in parallel columns (i.e., side by side): (1) the substance of the house version; (2) the substance of the senate version; and (3) the substance of the recommendation by the conference committee.

(c) Collecting the parts of a side-by-side. To prepare a side-by-side, the drafter needs the following documents:

- The bill as it passed the originating chamber, called the "engrossed" bill. This will be the text analyzed in column one.
- Changes made to the engrossed bill by the nonoriginating chamber, including any committee substitute and any committee or floor amendments adopted. (For a house bill, a house document called the "senate amendments printing," which includes the house engrossed version followed by all senate changes, is produced when the bill is returned by the senate.) The text as changed by the nonoriginating chamber will be the text analyzed in column two.
- The conference committee bill text or, if the conference committee bill text is unavailable when the third column of the side-by-side is being prepared, drafting instructions for that text. The conference committee bill text will be the text analyzed in column three.

(d) Drafting a side-by-side. Legislative drafters have access to a side-by-side template in Word.

Layout

The drafter should match up corresponding provisions in each bill version. These corresponding provisions will not always have the same bill section number or be organized in the same manner. For example:

(House)	(Senate)	(Conference Committee)
SECTION 4. Adds Section 623.271, Transportation Code, Injunctive Relief.	SECTION 5. Adds Section 623.273, Transportation Code, Injunctive Relief, same as House version.	SECTION 5. Same as Senate version.
SECTION 5. Effective date.	SECTION 7. Same as House version.	SECTION 9. Same as House version.

[1]Rule 13, Section 11, of the house of representatives and Rule 12.10 of the senate.

The drafter may sometimes find it useful, for clarity or ease of composition, to break a bill section into the various statute sections it affects, or even to break statute sections into statute subsections or subdivisions.

Layout can be simplified by following, in column one, the sequence of the provisions in the bill version from the originating chamber. Corresponding provisions in columns two and three can then track this layout. As far as possible, the drafter should arrange the layout so that the sequence of all three versions is preserved. For example:

(Senate)	(House)	(Conference Committee)
SECTION 1. . . .	No equivalent provision.	SECTION 1. Same as Senate version.
SECTION 2. . . .	SECTION 1. . . . Same as Senate version, except	SECTION 2. Same as House version.
SECTION 3. . . .	No equivalent provision.	Same as House version.
No equivalent provision.	SECTION ___	SECTION 3. Same as House version.
SECTION 4. . . .	SECTION 2. Same as Senate version.	SECTION 4. Same as Senate version.

Numbering

To avoid confusion, if a floor or committee amendment in the second chamber adds a bill section, the section number should be left blank (SECTION __.) in the side-by-side (see the next-to-last entry in column two above), and other bill sections should not be renumbered, even if the amendment specifies otherwise.

Drafting Guidelines

The analysis may be prepared as a full-text analysis or a summary analysis. A full-text analysis is faster and safer, but longer, and if not carefully highlighted, is less helpful to legislators. A summary analysis takes more time to create, but is shorter, and if done well, may be more helpful to legislators.

Full-Text Analysis. If preparing a full-text analysis, cut and paste the text of each bill section into the appropriate cell.

Summary Analysis. If preparing a summary analysis, describe the substance of the areas of the bill that are in disagreement. Restrict information on elements that are the same to the minimum necessary to provide adequate context. Unnecessary detail slows down drafting, increases the possibility of factual errors, and runs counter to the purpose of the side-by-side, which is not to explain the bill but rather to make the differences among versions clear.

When composing an entry, use present tense. Complete sentences are not necessary. Conciseness is preferable.

For a bill section that amends existing law, open with “Amends” and cite the statute or statutes amended:

Amends Section 26.034, Water Code, to require . . . .

OR

Amends Sections 11.01 and 11.02, Texas Racing Act (Article 179e, V.T.C.S.), as follows: . . . .

For a bill section that adds a new statute section or subsection, open with "Adds" and cite the statute or statutes added:

Adds Section 26.035, Water Code, to provide . . . .

OR

Adds Section 26.035(c), Water Code, to provide . . . . (for an added statute subsection)

For a bill that affects a specific location identified by population brackets, use the description from the bill text rather than the name of the city or county affected.

For a bill in which one or more bill sections make substantive changes to the law, forming the central subject of the bill, and subsequent provisions in the bill that must be summarized conform other laws to those changes, write "Makes a conforming change" rather than repeatedly describing the change.

Describing Differences

Full-Text Analysis. If preparing a full-text analysis, use spacing within a cell to line up text that is to be compared and use visual cues such as highlighting, italics, or bolding to show where the differences are.

Summary Analysis. When versions are essentially the same but contain differences that can be briefly explained, begin the analysis of the second chamber and conference versions with "Same as House version, except" or "Same as Senate version, except" and describe the difference.

Either Type of Analysis. Bill components that are not in dispute (i.e., identical) may be omitted. It is safer to identify them by bill unit in column one and write, "Same as (column one) version" in the other two columns. It is not necessary to address differences in bill captions.

If the conference committee has adopted either the house or senate version of a bill component verbatim, indicate which version by stating "Same as House version" or "Same as Senate version" in column three.

If one of the first two versions does not contain a bill component that is in another version, write "No equivalent provision" in that version's column. For "No equivalent provision" entries, there will not be a bill section number or statute identifier. (See the first and third rows in the second example under Layout above.)

- If one chamber's version and the conference committee version have no equivalent provision for something in the other chamber's version, describe the conference committee version as "Same as . . ." the other version with no equivalent provision.
- If neither chamber's version has an equivalent provision for a bill section in the conference committee report, write "No equivalent provision" in the first column and "Same as House version" or "Same as Senate version" in the second column.

CHAPTER 7
STYLE AND USAGE

A well-drafted statute expresses the legislature's intent as precisely and readably as the English language permits. Good draftsmanship is simply good writing. A well-drafted statute is distinguished by clarity, economical use of language, logical organization, and adherence to generally recognized standards of grammar and usage. In the words of Justice Holmes, a good piece of drafting excludes "every misinterpretation capable of occurring to intelligence fired with a desire to pervert."[1]

The Texas Legislative Council staff follows the rules of standard American English style and grammar in drafting legislative documents. The purpose of this chapter is to ensure consistency in instances where more than one style is considered correct or where the unique characteristics of legislative documents require a deviation from the generally accepted standards. The rules in this chapter should usually be adhered to, but when current law is being amended, the style of the statute being amended should be followed. These rules are not meant to be applied arbitrarily, although a drafter should not deviate from them without good reason.

This chapter is organized as follows:

[1]*Paraiso v. United States*, 207 U.S. 368, 372 (1907).

Subchapter A
Rules of Style

SEC. 7.01. ABBREVIATIONS. Put a space between the initials of a personal name. Other abbreviations using the first letters of words do not require a space:

J. S. Jones
U.S. Department of Commerce
Washington, D.C.
H.B. No.
S.J.R. No.
Ph.D.
B.A.

Some commonly used abbreviations are acceptable:

6 a.m.

Abbreviations of the names of agencies and organizations should be avoided:

DO NOT WRITE	*WRITE*
TDCJ	Texas Department of Criminal Justice

Often in legislation, the agency will be defined in a definitions section. If there is no definitions section, or if the reference appears in a letter, memorandum, resolution, or other such document, the drafter should write in full the name of the agency or organization at its first mention and refer to it later in the document by a generic term (e.g., "the department"). It is also occasionally acceptable in resolutions and nonlegislative documents to spell out the first reference to the entity, write its initials in parentheses directly after, and use only the initials in subsequent references. When referring in these documents to an entity that is commonly known by its initials (e.g., ISD, USPS, UT), the drafter may omit the parenthetical reference and simply use the initials in references following the first spelled-out one. For entities and items commonly identified by initials only (e.g., AARP, FFA, IBM, NAACP, SALSA, SAT, UIL, YMCA), the drafter may use just the initials.

In general, preference should be given to using generic terms instead of abbreviations that are not well known. A generic term is usually easily understood, but an artificial system of encoded initials often contributes more to confusion than to clarity.

SEC. 7.02. CAPITALIZATION. This section discusses capitalization in relation to the following:

- administrative bodies
- judicial bodies
- legislative bodies
- documents
- educational institutions
- funds
- nationalities
- place names
- plurals
- titles and offices

Administrative Bodies

Capitalize only the official name of a federal, state, or local agency:

```
Texas Ethics Commission; the ethics commission; the
commission

Texas Legislative Council; the council

Lower Colorado River Authority; the authority
```

Lowercase the name of a division or department within an agency:

```
the legal division of the Texas Legislative Council
```

Capitalize the official name of an advisory body:

```
Texas Historical Records Advisory Board; the advisory board
```

Judicial Bodies

Capitalize the names of courts as follows:

```
Supreme Court of Texas; Texas Supreme Court; supreme
court; the court

Texas Court of Criminal Appeals; court of criminal
appeals; appeals court

Twelfth Court of Appeals; court of appeals

4th District Court; County Court of Travis County;
Probate Court of Harris County; district court; county
court; probate court
```

Legislative Bodies

Capitalize only the official name of a legislative body or the name referring to a specific legislative session:

> Texas Legislature; Legislature of the State of Texas; 79th Legislature, 3rd Called Session; 81st Legislature, Regular Session; the legislature; the state legislature
>
> Texas Senate; Senate of the State of Texas; Senate of the 81st Texas Legislature; the senate; state senate
>
> Texas House of Representatives; House of Representatives of the State of Texas; House of Representatives of the 81st Texas Legislature; the house; the house of representatives
>
> United States Congress; Congress of the United States; 71st Congress; 110th Congress; the congress
>
> Travis County Commissioners Court; Commissioners Court of Travis County; the commissioners court

Documents

Capitalize only the official name of a document:

> Texas Constitution; the state constitution; the constitution

Capitalize the name of a specific act, short title, or statute revision or compilation:

> State Medical Education Act
> Revised Statutes
> Penal Code

Capitalize “act” only when it is used in a citation or in an act of legislation or when it is part of the title of an act:

> Acts of the 81st Legislature
> this Act
> Texas Racing Act

Capitalize a word describing a part of a law only if it is followed by a specific number or letter designation:

> Chapter 623; this chapter
> Section 2; this section
> Subsection (a); this subsection

Always lowercase “page” and “line”:

> page 10, line 22

Educational Institutions

Capitalize only the full name of an educational institution:

```
The University of Texas; The University of Texas at El Paso; The University of Texas System; the university

Texas A&M University; The Texas A&M University System
```

Funds

Do not capitalize the names of funds:

```
the general revenue fund
```

Nationalities

Capitalize proper names of races, tribes, peoples, and nationalities:

```
African American, American, Asian American, English, American Indian, Mexican American, Hispanic
```

(Note: No hyphen is used in the adjectival or noun form of terms such as "African American.")

Lowercase designations based on color, size, or local usage:

```
aborigine, black, brown, white
```

Place Names

Capitalize common nouns and adjectives that form an essential part of a proper name. Do not capitalize nouns or adjectives that are merely used with a proper name:

```
Travis County; County of Travis

City of Austin (governmental unit); city of Austin (the actual place)

Trinity River

West Texas (a specific region); western Texas
```

Capitalize "State of Texas" in bills and resolutions even though "state" is not an essential part of the name.

Capitalize the names of buildings and monuments:

```
the Alamo
the Capitol; the State Capitol; Capitol Complex
the Governor's Mansion
the Robert E. Johnson Building
```

Plurals

Common-noun elements of proper nouns used in the plural are capitalized:

```
Travis and Hays Counties; counties of Travis and Hays
Trinity and Brazos Rivers
United States and Texas Constitutions
Sections 2 and 3 of this Act
Lakes Austin and Travis
```

Titles and Offices

Capitalize a formal title only when used before a personal name. Lowercase a title when it follows a name or is used in place of a name:

```
Governor Jones; James Jones, governor of Texas;
the governor of Texas; the governor
Senator Doe; John Doe, state senator
the president of the United States
the comptroller; the secretary of state; the commissioner
of the General Land Office
```

SEC. 7.03. NUMBERS. Included in this section are rules about numbers as follows:

- general rules
- dates
- fractions and decimal fractions
- money
- ordinal numbers
- percentages
- time

See Section 7.27 for expression of age and Section 8.07 for standard classification formats.

General Rules

Express a number under 10 in words unless it is a number such as a dollar amount, date, decimal fraction, or section number. These and exact numbers of 10 and above are expressed in figures. Express rounded numbers of one million or more by spelling out "million" (or "billion," etc.) and following the general rules for the rest of the number:

```
1,952,476; 4,392,675,001
two million; 14 million
3.5 million; 11.6 billion
```

If a sentence begins with a number, either express the number as a word or rearrange the sentence so that the number does not appear at the beginning.

If any number in a group is 10 or more, express all the numbers in the group in figures:

The board may have 7, 9, or 11 members.

The board may have three, five, or seven members.

They have 5 children, 18 grandchildren, and 9 great-grandchildren.

She weighed 6 pounds, 14 ounces at birth.

Section 52.011 applies to students in grades 7 through 11.

Do not express a number in both words and figures:

DO NOT WRITE	*WRITE*
four (4); six dollars ($6)	four; $6

In legislation, do not use "over" to express an indefinite number of people or things:

DO NOT WRITE	*WRITE*
over 17 members	at least 18 members
	OR
	not fewer than 18 members

Dates

Express dates as follows:

June 2009

June 30, 2009 (not June 30th, 2009)

June 30 to July 15, 2009

January 15 (not 15 January, January 15th, or the 15th day of January)

Fractions and Decimal Fractions

Express common fractions in words:

three-fourths inch; one-tenth of the cost

Quantities consisting of both whole numbers and fractions, or fractions that contain three figures or more, should be expressed in figures or as decimal fractions:

```
7/64; 55/100; 3-5/8
0.36; 1.7; 16.25
```

Money

Express monetary amounts as follows:

```
one cent
10 cents
$5; $138 (with no decimal point or ".00")
$7.25
$6,000 (with a comma)
$300,000
$4.5 million
$22 million
$22,347,688.66
$100 valuation
```

Ordinal Numbers

Express ordinal numbers under 10 in words, 10 or greater in figures:

```
first; ninth
10th; 23rd; 61st; 145th
```

When referring to a specific legislative session, use figures:

```
79th Legislature, 3rd Called Session
```

When referring to centuries, use figures:

```
the 21st century
```

When referring to constitutional amendments, use words and initial capitals:

```
the Eighteenth Amendment
```

Percentages

Follow the general rule when expressing percentages:

one percent; 10 percent
two-tenths of one percent
5.3 percent; 25.7 percent

Time

Express time as follows:

8:30 p.m.
11 p.m.
1 p.m.
12 noon; noon
12 midnight; midnight

SEC. 7.04. MATHEMATICAL COMPUTATIONS. In expressing a mathematical computation, the drafter either may choose a mathematical formula to express the computation or may use words to describe the computation. The drafter should choose whichever approach makes the computation easier to understand and apply in the context of the statute. For a very simple computation that is as easily expressed in words as it is in mathematical symbols, the drafter should use words. For complex computations that are more easily understood expressed in symbols (such as a school funding formula), the drafter should use mathematical symbols.

SEC. 7.05. PLURALS. Legislative council style follows the accepted practice of forming plurals by adding "s" or "es" to a noun.

If the plural of a word borrowed from another language has an anglicized form, that form is used:

appendix = appendixes
stadium = stadiums
biennium = bienniums

Some borrowed words retain their foreign endings in the plural:

alumna = alumnae
alumnus = alumni
medium = media

The word "data" may be used as either a singular or a plural noun:

The data (a unit or collection of information) is current.
The data (discrete units of information) are current.

Titles consisting of two or more words become plural when the important word is made plural:

attorneys general
general counsels
notaries public

The plural of figures, initials, and acronyms is formed by adding "s":

1960s
GEDs

SEC. 7.06. POSSESSIVES. The following rules apply to both common and proper nouns.

To form the possessive case of a singular noun or of an irregular plural noun, add an apostrophe and an "s" to the word:

one month's worth
the dog's collar
the women's hammers

To form the possessive case of a plural noun that ends in "s," add an apostrophe:

six days' worth
the cats' noses
the Collinses' dog

To form the possessive case of a singular noun that ends in "s," add an apostrophe and an "s" to the word. If a sibilant occurs before the final syllable, adding an apostrophe and an "s" would make the word awkward to pronounce. To avoid a triple sibilant in pronouncing the possessive form, add only an apostrophe:

the alumnus's books
the witness's answer
Texas' wildlife
Moses' guidance

SEC. 7.07. PREFIXES. Most prefixes are joined to their nouns without the use of hyphens. Some of those prefixes are:

anti-	macro-	pro-
co-	micro-	pseudo-
de-	mid-	re-
extra-	mis-	semi-
hyper-	multi-	sub-
hypo-	non-	super-

infra-	over-	supra-
inter-	post-	un-
intra-	pre-	under-

A hyphen is inserted between a prefix and a noun if the omission would cause confusion about the meaning of the word, if it seems awkward, or if it would affect the pronunciation:

re-creation
re-present
co-owner
intra-agency

When a proper noun has a prefix, a hyphen is inserted:

mid-Atlantic

Most dictionaries contain lists of words that start with a prefix and indicate whether a hyphen should be used in those words.

SEC. 7.08. PUNCTUATION. This section discusses:

- colons
- commas
- dashes
- ellipses
- parentheses
- quotation marks
- semicolons
- underscoring

Colons

Use a colon to introduce a series of dependent subdivisions or to introduce subdivisions of a definitions section. See examples under “Semicolons” below.

Commas

Use commas to set off the name of a state when used with the name of a city:

Austin, Texas,

Use commas to set off the year of a date when month, day, and year are given. Do not use commas when only month and year are given:

July 19, 2009,
July 2009

Use a comma in numerals of 1,000 or more:

```
5,280
23,555
```

Use commas to set off the titles "Jr." and "Sr." in a personal name. Do not use a comma between a last name and a Roman numeral:

```
John Smith, Jr., was here.
John Smith III was not here.
```

Use commas between words in a series:

```
apples, oranges, and peaches
red, amber, and green lights
```

See Subchapter C of this chapter for special uses of commas in citations.

Dashes

A dash is made up of two hyphens with no spaces in between or at either side:

```
WORKING DRAFT--FOR STAFF REVIEW ONLY
```

Ellipses

An ellipsis, three spaced periods, indicates that a part of a quotation has been omitted. If the omission occurs after the end of a sentence, four spaced dots are used: the period at the end of the sentence and the three ellipsis points. If the omission occurs before the period, four spaced dots are used, with a space between the final word and the first dot:

```
Immediately after they are assembled . . . they shall
be equally divided into three classes. . . . The third
class shall be . . . .
```

Parentheses

Except to indicate unofficial citations of statutes and to enclose bill numbers in official citations of session laws, parentheses are seldom used in legislative documents. A descriptive, nonrestrictive clause is properly set off by commas. A truly parenthetical phrase is inappropriate. See Section 7.36 for a description of nonrestrictive clauses.

Quotation Marks

When quoting within textual matter, place periods and commas inside quotation marks and colons and semicolons outside. (See Section 6.03 for exceptions to this rule in floor and committee amendments.) Use quotation marks to make clear the meaning or use of words or phrases:

In this Act, "department" means the Texas Department of Transportation.

Semicolons

Use a semicolon if needed for clarity in a list that also contains commas:

Mr. Smith is survived by his sons, Joe, Jack, and Jim; his daughters, Joan, Jane, and Jean; his brother, Jerry; and his sister, Jasmine.

Use a semicolon between subdivisions that constitute a list or that are dependent on the same introductory language:

(b) The surveyor shall certify that the surveyor:

(1) has examined the field notes;

(2) finds the field notes correct; and

(3) has recorded the survey.

Treat subdivisions of a definitions section as complete sentences, even though there is introductory language, and end them with periods, not semicolons:

In this Act:

(1) "Board" means the School Land Board.

(2) "Commissioner" means the commissioner of the General Land Office.

(3) "Land office" means the General Land Office.

Use a semicolon between clauses of a simple or concurrent resolution.

Underscoring

Always use a solid underscore. Do not underscore familiar foreign terms:

et al.

et seq.

de facto

See Section 3.10 for the use of underlining and bracketing in amendatory drafts.

SEC. 7.09. SPELLING AND SPECIFIC USAGE. As a general rule, follow these guidelines for capitalization, spacing, and style in new legislation:

A&M
Act (when used in an Act)
assessor-collector (assessors-collectors)
at-large (adj.)
at large (adv.)
attorney general (attorneys general)
attorney's fees
Btu (no periods or spaces, singular or plural)
bachelor of arts or bachelor's degree
benefited
canceled, canceling
cancellation
cashier's check
child-care (adj.)
citywide
Class A misdemeanor
co-chair
commissioners court (no apostrophe)
common law rule
countywide
cross-action (noun)
database
day-care (adj.)
doctoral degree, doctorate
e-mail
et al.
et seq.[1]
ex officio
farm-to-market road
Farm-to-Market Road 666
felony of the third degree
firefighter
firefighting
first class postage
General Appropriations Act
general appropriations bill
general-law municipalities
general revenue fund
good faith effort
great-grandchild
health care facility
home-rule municipalities
the Honorable
impanel
inasmuch as (two words)
in-service (adj.)
insofar as (two words)
Internet
intra-agency
joint stock company
judgment (not judgement)
lieutenant governor (not lt. gov.)
Lloyd's plan
lump-sum (adj.)
master of arts or master's degree
Medicaid
Medicare
money (not moneys or monies)
nonprofit (except Non-Profit Corporation Act)
officeholder
online
on-site (adj.)
part-time (adj. and adv.)
percent
Ph.D.
policy maker
policyholder
Pub. L. No.
recordkeeping
right-of-way (rights-of-way)
rulemaking
saving clause (not savings)
single-member district
special-interest (adj.)
State of Texas
state government
state-owned
state-supported
statewide
taxpayer (one word; but property tax payer)
Texas' (possessive)
Texas A&M University, The Texas A&M University System
Texas Constitution
The University of Texas (not U.T.), The University of Texas at Austin, The University of Texas System, the university
toll-free number
United Mexican States (not Republic of Mexico)
Veterans' Land Board
vice president
water (not waters, when applying to state water. See Section 31.003, Parks and Wildlife Code)
website
wilful, wilfully
workers' compensation
workforce
workplace
workweek
x-ray (noun, verb, and adj.)

[1]Article (singular) 689a (no comma) et seq.

SEC. 7.10. SYMBOLS. In general, use no symbols except the dollar sign in text. Spell out “percent,” “section,” “pounds,” “feet,” and “inches.” An exception may be made in formulas and tables, which often require the use of symbols for brevity.

Use an ampersand (&) in the following:

```
Texas A&M University
Texas A&I University
Business & Commerce Code
```

When amending language that uses symbols, conform the new language to the old:

```
fifty per cent
50%
```

SEC. 7.11. NOTES AND FOOTNOTES. In drafting reports and memoranda that contain end-of-document notes or footnotes, observe the following conventions generally. Notes and footnotes are keyed to the text with superscripted Arabic numerals or, if only one or two footnotes are needed, with asterisks. The number or asterisk may be placed at the end of the sentence, at the end of a clause, or after the specific word being referenced. The designator follows any punctuation mark except a dash, which it precedes.

Footnotes are set off from the text on the page by a solid line, and the number before each footnote is superscripted. End-of-document notes should start on the page following the last page of text and are titled “Notes” (not “Endnotes”). The number before each note is not superscripted but is full size and is followed by a period and space.

Subchapter B
Drafting Rules

SEC. 7.21. ACTIVE VOICE. Use the active voice.

DO NOT WRITE

If it is found that the applicant is qualified, a license shall be issued.

WRITE

The department shall issue a license if it finds that the applicant is qualified.

It is permissible to use the passive voice to avoid awkward repetition, but only if the identity of the actor is clear.

For example:

The director of the institutional division shall assign each inmate to a unit in the institutional division. Assignments may not be made on the basis of race.

SEC. 7.22. CONCISENESS. Write concisely, but do not substitute brevity for accuracy or clarity. Do not use words or phrases that are longer or more complicated than necessary to express an idea.

Edit your work aggressively. Delete language that contributes to neither meaning nor readability. The italicized words in the following examples are typical statutory surplusage:

A person who violates *a provision of* this section . . . .

The application must show the *actual* age and *correct* mailing address of each employee. (That a false answer will not suffice goes without saying; besides, there are laws against falsification and perjury.)

referendum *election* . . . . (A referendum is by definition an election.)

On or after the effective date of this Act, a corporation may not . . . . (This phrase may be used in saving and transition clauses, but for all other purposes prospective application may be assumed without a statement to the contrary.)

the governor *of this state* . . . the attorney general *of Texas* . . . the *county* commissioners court . . . . (Identifying phrases such as these should be used only to avoid ambiguity.)

See also the list of legalese and preferred usage in Section 7.29.

SEC. 7.23. CONSISTENCY. Avoid using more than one expression for the same thing, since a change in terminology may be construed as a shift in meaning. For example, if a statute refers to the mayor as "mayor" in one instance and "chief executive officer of the city" in another, the latter reference may be misconstrued to mean "city manager."

Whatever value the intentional variation of terminology may have in other types of writing,[1] it is out of place in legislative drafting, where readability and clarity are essential.

SEC. 7.24. COURT-CONSTRUED LANGUAGE. There is little, if any, validity to the idea that particular language, having been construed by a court, will be assigned the same meaning in another statutory context. It is some indication that the meaning of a phrase is unclear if a court is asked to construe it. Of course, if judicially construed language clearly expresses an idea, there is no reason to avoid it; by the same token, if judicially construed language is ambiguous, do not use it.

SEC. 7.25. FINITE VERBS. Use finite verbs instead of corresponding noun or adjective forms to denote action:

DO NOT WRITE	*WRITE*
give consideration to	consider
have knowledge of	know

SEC. 7.26. GENDER. The use of masculine pronouns is subject to criticism as an example of sex bias, and for that reason gender-neutral language is preferred in drafts of legislative documents.[2] Drafts should:

(1) follow accepted principles of grammar and usage and applicable rules of statutory construction to avoid constructions that imply that only men do important things, such as hold office; and

(2) express ideas to the extent possible with gender-neutral terms.

In drafting an amendment to existing law, the drafter must balance the preference for gender-neutral terms with the style of the law being amended. For example, even as the drafter avoids the use of personal pronouns and employs the other techniques suggested below, if the statute being amended uses "chairman" as a reference to the presiding officer of a body, the drafter should continue the use of "chairman" in the amendment (even though in original drafting "presiding officer" or a similar gender-neutral term is preferred). A drafter should not expand the size of a bill by amending other sections of the statute being amended simply to replace language that is not gender neutral. Most references in existing law that are not gender neutral occur in statutes that have not been recodified under the continuing

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[1]Under the heading "Elegant Variation," Fowler's *Dictionary of Modern English Usage* (2nd ed. 1965) states:

> It is the second-rate writers, those intent rather on expressing themselves prettily than on conveying their meaning clearly . . . that are chiefly open to the allurements of elegant variation. . . . The fatal influence is the advice given to young writers never to use the same word twice in a sentence—or within 20 lines or other limit.

[2]The traditional rule of construction that the masculine includes the feminine, and vice versa, is provided by Sections 311.012(c) and 312.003(c), Government Code. This rule was stretched to an extraordinary length in *Ex Parte Groves,* 571 S.W.2d 888 (Tex. Crim. App. 1978), where, in response to the argument that Texas' "statutory rape" statute violated the equal rights amendment to the state constitution, the Texas Court of Criminal Appeals, relying on Section 311.012(c), held that "female" and "wife," as used in the statute, included "male" and "husband," respectively.

This section incorporates some suggestions made by the Women in the Profession Committee of the State Bar of Texas.

statutory revision program. Those terms will be replaced with gender-neutral terms when council staff drafts the proposed recodification of the statute at issue.

A drafter may find the following techniques useful to comply with this policy:

- Use an article such as "the," "a," "an," or "that" to replace the personal pronoun:

  An applicant must include with *the* (rather than "his") application . . . .

- Use a possessive noun:

  The comptroller shall issue an annual report, and *the comptroller's* (rather than "his") recommendations . . . .

- Repeat the name or title of the actor:

  A person is entitled to a license if *the person* (not "he") . . . .

- Use an adjective instead of a pronoun to modify a noun:

  A judge may not lend the prestige of *judicial* (rather than "his") office to private interests.

- Use a subordinate clause that operates as an adjective:

  An attorney *who shows disrespect* to the court will be held in contempt. (Instead of "If an attorney shows disrespect, he will be held in contempt.")

SEC. 7.27. HOW TO EXPRESS AGE. When establishing a minimum age, use "at least 18 years of age" rather than "over 18 years of age." The latter expression is ambiguous because it is not clear whether a person becomes "over 18" on the person's 18th birthday, on the following day, or on the person's 19th birthday.

When referring to persons within a certain age range, make it clear exactly who is included. For example:

DO NOT WRITE	*WRITE*
persons between the ages of 30 and 40 (It is unclear whether persons exactly 30 or 40 years old are included.)	persons who are at least 30 years of age but younger than 40 years of age

In drafting criminal statutes, take note of Section 1.06, Penal Code, which provides:

> Sec. 1.06. COMPUTATION OF AGE. A person attains a specified age on the day of the anniversary of his birthdate.

This provision applies not only within the Penal Code, but to any statute defining an offense. (See Section 1.03(b), Penal Code.)

SEC. 7.28. HOW TO EXPRESS TIME. To refer to the **date** on which an event occurs, use "day" or "date," as the context requires, as opposed to "time." "The *time* when . . ." may be construed to mean a time of day. See Section 7.03 for guidance in expressing the time of day.

In expressing a **deadline**, leave no doubt about which is the last day on which action may be taken.

DO NOT WRITE	*WRITE*
The report must be filed within 20 days of (or "from") the entry of the order.	The report must be filed not later than the 20th day after the date the order is entered. *OR* The report must be filed before the 21st day after the date the order is entered.

What is objectionable about the preceding *DO NOT WRITE* example is not the word "within" but the word "of" or "from." "Within 20 days *after* . . ." is unambiguous and legally correct. However, either of the forms shown under *WRITE* more clearly indicates the method of computing the deadline: the day after the date of the order being the first day after that date, the next day being the second day, and so on until one reaches the 20th day, which is the last day on which action may be taken. "Within 20 days after the date" says the same thing, but unless the reader is aware of the common law and the Code Construction Act rules that provide that in computing a period the first day is excluded and the final day is included, the reader may erroneously count the date on which the order is entered as the first day.

Note also that the preferred method of time computation begins with the date of an event and not the event itself. This is done to avoid an erroneous inference that time is measured in 24-hour periods before or after the time of day at which the event occurs.

Describe a **period** in a way that makes the first and last days clear.

DO NOT WRITE	*WRITE*
between April and May 31	after March 31 and before June 1

Take note of Sections 311.005(10) and (12) and 311.014, Government Code, when drafting legislation covered by the Code Construction Act.

SEC. 7.29. LEGALESE AND PREFERRED USAGE. Avoid using words that merely make a draft look legal and impressive. Avoid also vogue or trendy words that may become obsolete. Except when necessary to conform an amendment to current law or to preserve an established term of art, avoid words or groups of words that can be stated more simply:

DO NOT WRITE	*WRITE*
above (adj.)	
afford	give
aforementioned	
and/or[1]	
any and all	any
as provided in	as provided by
authorized to	may
by and through	by, through
commence[2]	begin, start
deem	consider
duly	
effectuate	effect, cause
exclusive of	excluding
fix (a rate, amount, or date)	set
foregoing	preceding
forthwith	immediately
herein	in this Act, section, etc.
hereinafter	in this Act, section, etc.
in excess of	more than
in order to[3]	to
in the event that	if
in whole or in part	wholly or partly
less (applied to quantity)	fewer (if it can be counted)
moneys	money
null and void	void
on or after January 1, 2010,[4]	after December 31, 2009,
per annum[5]	a year
prior to	before
properties	property
pursuant to	under
revenues	revenue
rules and regulations	rules
said (adj.)	
same (noun)	it, etc.
save	except
subsequent to	after

[1]To emphasize that a reference is to either or both, use a construction such as "The offense is punishable by a fine of not more than $200, by confinement in jail for not more than 30 days, or by both the fine and the confinement." As Follett comments in *Modern American Usage,* "[E]xcept for lawyers, English speakers and writers have managed to express this simple relationship without and/or for over six centuries."

[2]"Commence" is appropriate to use in reference to a suit or proceeding but should not be used as a substitute for "begin" in other contexts.

[3]"In order to" may be used to avoid ambiguity. For example, note the difference in meaning between these two sentences: "The law invalidates private agreements to protect public safety" and "The law invalidates private agreements in order to protect public safety."

[4]"On or after the effective date of this Act" may be used in saving and transition clauses.

[5]"Per diem," meaning compensation for expenses payable on a daily basis to a public officer or employee, is an established term of art that should not be anglicized. "Miles per hour" is also acceptable.

DO NOT WRITE	*WRITE*
such (adj.)[1]	
terms and conditions	terms
time period	period, time
to wit	namely
under the provisions of	under
upon	on
utilize	use
valid license	license
via	through, by
whatsoever	what
whensoever	when

SEC. 7.30. "SHALL," "MUST," "MAY," ETC.[2] Use "shall" only to denote a duty imposed on a person or entity.

> The commissioner *shall* issue a license. (It is the commissioner's duty to do so.)

Use "must" to denote a condition precedent. The existence of a condition precedent means that a person, action, or other thing is required to comply with a stated condition as a prerequisite to having full legitimacy. The condition may be stated in a variety of ways, but typically the condition requires the person, action, or other thing to:

(1) meet certain stated conditions;
(2) possess certain stated characteristics; or
(3) consist of certain stated components.

> Before entering the premises, the inspector *must* obtain the consent of the property owner. (Obtaining the consent of the property owner is a condition to the inspector's authority to enter the premises.)

> To be eligible for appointment, a person *must* be at least 18 years of age. (A person is ineligible unless the person possesses the characteristic of being at least 18 years of age.)

> The board may appoint three persons to serve as an advisory committee to the board. The advisory committee *must* be composed of an engineer, an architect, and an attorney. (The required components of the advisory committee are the three specified professionals.)

[1] "Such" may be used to avoid ambiguity.

[2] See Section 311.016, Government Code.

A drafter may find the choice of whether to use "shall" or "must" difficult, particularly when using the passive voice. In general, "must" is used if the sentence's subject is an inanimate object (i.e., is not a person or body on which a duty can be imposed).

> The application *must* be in writing. (A required characteristic of an application is that it be in writing; an application that is not in writing is invalid.)

There are circumstances in which either "shall" or "must" is correct, and the better choice depends on the context or point of emphasis.

> A report *must* be filed on the form provided by the agency. (A required characteristic of a report is that it be on the form provided by the agency; a report not filed on the correct form is invalid.)

> A report *shall* be filed on the form provided by the agency. (An unidentified person or entity has the duty to file a report on a form provided by the agency. A preferable, more direct way of emphasizing the duty would be to identify the actor, if the actor is known, and use the active voice. See Section 7.21 of this manual.)

A drafter might also choose a drafting approach that eliminates the decision of whether to use "shall" or "must." Under this approach, the provision simply states a legal fact.

> The appointee qualifies for office by taking the official oath and filing the required bond. (The method by which the appointee qualifies for office is stated as a factual matter.)

Use "may" to denote a privilege or discretionary power.

> The commissioner *may* inspect records. (The commissioner has authority to inspect records, but may not be compelled to do so.)

Use "is entitled to" to denote a right, as opposed to a discretionary power.

> A qualified person *is entitled to* a license. (The person has a right to a license.)

Use "may not" to denote a prohibition.

> The clerk *may not* release the report. (The clerk is prohibited from releasing the report.)

NOTE: To define a criminal offense, use the format recommended in Section 3.09(b) of this manual.

SEC. 7.31. MODIFIERS. Place modifying words and phrases so there is no doubt about what they modify. Poor placement of modifiers is probably the main contributor to ambiguity in statutes.

Consider the following examples:

> SECTION 4. A person is not required to hold an exterminator's license to apply a Class A insecticide or trap mice on the person's own property.

Does the qualification "on the person's own property" apply only to "trap mice" or does it also qualify "apply a Class A insecticide"? This ambiguity may be cured by one of the following reformulations, depending on the meaning intended:

> SECTION 4. A person is not required to hold an exterminator's license to do the following on the person's own property:
>
> (1) apply a Class A insecticide; or
>
> (2) trap mice.

OR

> SECTION 4. A person is not required to hold an exterminator's license to:
>
> (1) trap mice on the person's own property; or
>
> (2) apply a Class A insecticide.

Placing the modifier "only" in each of the possible positions in the following sentence produces several different meanings:

> The board may impose a penalty.

Careful consideration of what, exactly, is being limited by a modifier decreases the chances that a sentence will convey an unintended meaning.

SEC. 7.32. PARALLEL CONSTRUCTION. Sentences, sections, chapters, and other units of a code or other statute that serve a parallel function should be organized and written in a parallel fashion.

If parts of a sentence are parallel in meaning, they should be parallel in structure.

Some examples of nonparallel construction are:

> The bill was not only discriminatory but was drafted poorly also. (*WRITE:* The bill not only was discriminatory but also was drafted poorly.)
>
> The problems are poverty, illiteracy, and using drugs. (*WRITE:* The problems are poverty, illiteracy, and drug use.)

The board's duties include the administration of this chapter and regulating license holders. (*WRITE:* The board's duties include administering this chapter and regulating license holders.)

The department shall collect fees for:

(1) renewing a license;

(2) amending a license; and

(3) an inspection of a license holder's premises.

(*WRITE:* The department shall collect fees for:

(1) renewing a license;

(2) amending a license; and

(3) inspecting a license holder's premises.)

SEC. 7.33. POSITIVE EXPRESSION. Express ideas as positively and directly as possible. For example:

DO NOT WRITE

If the annexed territory *does not have fewer than 10* registered voters . . . .

WRITE

If the annexed territory *has 10 or more* registered voters . . . .

SEC. 7.34. SINGULAR NUMBER. If either the singular or the plural number can be used to express an idea, use the singular.[1] This usually produces a clearer style and facilitates simpler constructions.

DO NOT WRITE

Persons may not operate trucks with more than two axles on Class C roads.

WRITE

A person may not operate a truck with more than two axles on a Class C road.

However, the plural is appropriate to refer to a class, as opposed to the individual members of the class. For example:

The Texas Education Agency shall establish a program to identify children with impaired hearing.

[1]The rule of construction that the singular includes the plural and vice versa is contained in Sections 311.012(b) and 312.003(b), Government Code.

BUT

If it appears that a child has impaired hearing, the agency shall inform the child's parent and recommend appropriate treatment.

SEC. 7.35. TENSE. Use present tense whenever possible. Future tense often requires the auxiliary "shall," which creates a false imperative. See Section 7.30 concerning the use of "shall."

DO NOT WRITE

The governor shall be the chief budget officer of the state.

WRITE

The governor is the chief budget officer of the state.

However, if it is necessary to express a time relationship in a statute, state in past or present perfect tense facts that have occurred or will occur before the statute's effective date or facts that will necessarily have occurred before the event described. For example:

A person who was employed by the department on January 1, 2009, is . . . .

If, before the effective date of this Act, the governor has determined that money is available to pay . . . .

A person who has been finally convicted of the offense two or more times is ineligible . . . .

As to statutes to which the Code Construction Act applies, Section 311.012(a), Government Code, provides that "[w]ords in the present tense include the future tense." The attorney general has held that under this rule of construction the present tense does not include the past tense or the perfect tense.[1] Consequently, a statute that by its language applied to a municipality that "creates" a board of trustees to manage a municipally owned utility did not apply to a municipality that *had created* a board of trustees before the statute took effect.

A drafter has several options to clearly indicate that a statute applies to an existing entity or condition. Perhaps the best approach is to choose a verb that indicates an ongoing activity:

This section applies to a municipality that operates a municipally owned utility.[2]

[1]Op. Tex. Att'y Gen. No. JC-509 (2002). The opinion's reference to "perfect tense" appears to include all the perfect tenses.

[2]The attorney general noted this distinction in JC-509.

Another option is to use the passive voice:

> This section applies to a board of trustees created by a municipality.

Finally, the drafter can use both the present perfect and present tenses:

> This section applies to a municipality that has created or that creates a board of trustees.

SEC. 7.36. "THAT" AND "WHICH." Use the pronoun "that," rather than "which," to introduce a restrictive relative clause. A restrictive relative clause is one that qualifies or limits the word it modifies, distinguishes it from others of the same class, and is essential to the meaning of the sentence. For example:

> This Act does not apply to a municipality *that has the commission form of government*.

A nonrestrictive relative clause, properly introduced by "which," makes a parenthetical descriptive statement about the word it modifies and may be deleted from the sentence without changing its sense. For example:

> Smallville, *which has the commission form of government,* is 50 miles from Metropolis.

As a rule of thumb, nonrestrictive clauses are surrounded by commas and restrictive clauses are not.

SEC. 7.37. THIRD PERSON. Use the third person.

SEC. 7.38. "FEWER" VS. "LESS" AND OTHER PERPLEXING PAIRS

affect/effect

"Affect" is a verb meaning "to influence or have an effect on":[1]

> This chapter does not affect a penalty under other state law.

"Effect" may be either a verb or a noun. As a verb, it means "to cause to come into being" or "to put into effect":

> The actor used a deadly weapon to effect his escape.
>
> The board shall adopt rules to effect the purposes of this chapter.

[1]The noun form of "affect," referring to the conscious subjective aspect of an emotion, is rarely used in contexts other than psychology.

As a noun, "effect" means "a result or consequence." It also means "the quality or state of being operative," as in the second example below:

> The duplicate receipt has the same effect as the original.
>
> This Act takes effect September 1, 2009.

biannual/biennial

"Biannual" and "semiannual" refer to something that occurs twice a year, while "biennial" means "occurring every two years." To eliminate possible misinterpretations caused by the similarity between "biannual" and "biennial," a drafter should use "semiannual" whenever the former sense is intended:

> The board shall hold semiannual meetings on dates set by the board.
>
> The governor shall deliver a biennial report to the legislature based on the information submitted.

compose/comprise

Traditionally, the whole always comprised the parts, but in contemporary usage "comprise" has come to mean both "to include or be made up of" and "to constitute or compose." For the sake of clarity, drafters should avoid using this Janus-faced term and instead use words that are more readily understood:

> The district may include more than one county.
>
> The committee is composed of 12 members.
>
> The fund consists of money appropriated to the fund.
>
> Minorities constitute 15 percent of the precinct's population.[1]

Though often seen, "is comprised of" is never correct and should be replaced by one of the terms in the above examples.

continual/continuous

The distinction between these terms is slight but useful. In general, "continual" means "recurring at intervals," and "continuous" means "going on without interruption":

> "Occupation" includes employment that requires continual supervision.
>
> The person must keep the certification in continuous effect.

[1]A drafter should use "is" instead of "constitutes" when the intended sense does not include the idea of constituent parts making up a whole. For example, "Each day of violation is a separate offense" is preferable to " . . . constitutes a separate offense."

fewer/less

"Fewer" applies to readily distinguishable or countable units:

fewer inmates
fewer votes

"Less" applies to mass nouns or to units and ideas that cannot be counted:

less paper
less importance

"Less" also is used with percentages and with terms that indicate units of time, distance, money, or population:

less than five percent
less than four years
less than 16 miles
less than $92 million
a population of less than 300,000

historic/historical

Something that is "historic" is memorable or important or figures in history, while something that is "historical" merely relates to or deals with history:

A historic site or structure acquired under this chapter is under the control and management of the municipality.

The county may accept donations for a historical museum.

practicable/practical

"Practicable" refers to something that is capable of being accomplished or feasible. "Practical" applies to what is useful or adapted to use or actual conditions:

The authority shall file the report with the legislature as soon as practicable.

The bonds may be issued in installments as the board finds feasible and practical in accomplishing the purposes of this section.

whether or not/whether

In most instances, "or not" may be omitted as superfluous or even as incorrect since "whether" can imply more alternatives than simply the opposite indicated by "or not." However, when the alternative is clearly posed, "whether or not" or "regardless of whether" should be used:

```
The commission shall determine whether to fund the
project.

The board shall hold meetings whether or not the public
member attends.

A provider is liable under this section regardless
of whether the provider had actual knowledge of the
omission.
```

SEC. 7.39. METES AND BOUNDS. When working with metes and bounds, follow the copy exactly. Legislative council staff does not make any changes in metes and bounds.

Subchapter C
Citations

SEC. 7.61. CODES. Examples of citations for Texas codes are as follows:[1]

Section 1.001, Agriculture Code,
Section 102.51, Alcoholic Beverage Code,
Section 23.30, Business & Commerce Code,
Section 21.304, Business Organizations Code,
Section 15.013, Civil Practice and Remedies Code,
Article 13.19, Code of Criminal Procedure,
Section 361.112, Health and Safety Code,
Article 3.25, Insurance Code, (for Title 1)
Section 31.001, Insurance Code, (for all other titles)
Section 201.002, Occupations Code,
Section 41.007, Parks and Wildlife Code,
Section 32.02, Penal Code,
Section 1003.051, Special District Local Laws Code,
Section 137, Texas Probate Code,
Section 11.007, Utilities Code,

SEC. 7.62. CONSTITUTION. To cite the Texas Constitution or the United States Constitution, use Roman numerals for the articles and Arabic numerals for the sections.

To cite an article of the constitution:

Article IV, Texas Constitution,
Article V, United States Constitution,

To cite a section of the constitution:

Section 44, Article III, Texas Constitution,
Section 1, Article II, United States Constitution,

To cite an amendment to the United States Constitution, use words instead of figures:

the Nineteenth Amendment

SEC. 7.63. REVISED STATUTES. To cite a title of the 1925 revision of the civil statutes:

Title 112, Revised Statutes,

To cite an article of the Revised Statutes:

Article 6228, Revised Statutes,

[1]For a complete listing of codes enacted or proposed under the legislative council's statutory revision program, see Section 8.09.

SEC. 7.64. SESSION LAWS. Observe the following forms when citing a session law, other than one that creates a special district or that amends an act creating a special district:[1]

A chapter: Chapter 2 (H.B. 3), Acts of the 78th Legislature, 3rd Called Session, 2003 (Article 197i, Vernon's Texas Civil Statutes),

A section: Section 5, Chapter 1202 (S.B. 1581), Acts of the 75th Legislature, Regular Session, 1997 (Article 9023e, Vernon's Texas Civil Statutes),

A part of a section: Section 4(a),[2] Chapter 1202 (S.B. 1581), Acts of the 75th Legislature, Regular Session, 1997 (Article 9023e, Vernon's Texas Civil Statutes),

A session law for a session for which special laws and general laws were published in separate volumes: Chapter 185 (S.B. 481), General Laws, Acts of the 42nd Legislature, Regular Session, 1931 (Article 5330a, Vernon's Texas Civil Statutes),

A 1939 general law:[3] Chapter 9 (H.B. 960), page 105, General Laws, Acts of the 46th Legislature, Regular Session, 1939 (Article 6243d-1, Vernon's Texas Civil Statutes),

A 1939 special law:[3] Chapter 5 (S.B. 303), page 1062, Special Laws, Acts of the 46th Legislature, Regular Session, 1939,

When citing a session law that creates a special district or that amends an act creating a special district, use the form indicated above but omit the parenthetical bill number and the unofficial Vernon's citation, if any.

SEC. 7.65. GENERAL APPROPRIATIONS ACT. To refer to current and future general appropriations acts:

the General Appropriations Act

To cite a particular general appropriations act:

Chapter 1428 (H.B. 1), Acts of the 80th Legislature, Regular Session, 2007 (the General Appropriations Act),

[1]The convention of including a parenthetical bill number reference in session law citations was adopted in 2008. Note also that "Regular Session" is used even for those legislatures, such as the 77th, that had no called session.

[2]In some instances, it is preferable to write "Subsection (a), Section 4." See Section 7.67.

[3]The session laws from the 1939 session are organized into titles, each of which begins with a Chapter 1. To specify which Chapter 1 is being cited, the drafter must include the page number as part of the citation.

To cite a particular appropriation in a general appropriations act:

> Item B.1.2 [or Item B.1.2 (Strategy)], page III-41, Chapter 1428 (H.B. 1), Acts of the 80th Legislature, Regular Session, 2007 (the General Appropriations Act),

To cite a particular rider in a general appropriations act:

> Rider 41, page III-52, Chapter 1428 (H.B. 1), Acts of the 80th Legislature, Regular Session, 2007 (the General Appropriations Act),

SEC. 7.66. INTERNAL CITATIONS. When internal citations refer to law other than the law in which they are found, they are the same as external citations.[1]

When internal citations refer to the law in which they are found, use these forms:

> **Another article in the Revised Statutes:** Article 4008, Revised Statutes,
>
> **Another section in the same code:** Section 21.021[2]
>
> **Another section in the same chapter of a session law:** Section 3 of this Act
>
> **Another part of a section in the same section:** Subsection (a) of this section[2]

If the reference is obvious, a drafter may choose to omit such phrases as “of this Act” and “of this section” in session laws and Revised Statutes that usually include them.

SEC. 7.67. LONG AND SHORT FORMS. Use the short, or compact, citation form if there is no possibility that it can be misunderstood:

> Section 15(a), instead of Subsection (a), Section 15,

Use the long form if the act has a Section 15 and a Section 15(a), a Section 15a, or a Section 15A:

> Subsection (a), Section 15,

If, by amendment, a citation is added to the text of a statute and another citation in the long form appears in the text close by, follow the usual practice of adapting the style of the amendment to the style of the law to which it applies, and use the long form.

---

[1]See the discussion of incorporation by reference in Section 8.11. It is not generally necessary to use “as amended” in references to statutes that may have subsequent amendments.

[2]A 1993 amendment to the Code Construction Act eliminated the need to recite “of this code,” “of this section,” etc., in internal citations in codes. See Section 311.006, Government Code.

SEC. 7.68. SHORT TITLES. Acts that are well known by their short titles are cited by those titles. Use the VTCS citation, when appropriate:

Section 3, Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes),

Section 5, Intractable Pain Treatment Act (Article 4495c, Revised Statutes),

Article 1.01, Texas Business Corporation Act,

Article 1.01, Texas Non-Profit Corporation Act (Article 1396-1.01, Vernon's Texas Civil Statutes),

If a code chapter has a short title, cite by the chapter number, *not* the short title. There is one exception to this rule. Internal statutory references to the Texas Sunset Act should appear as follows:

Chapter 325, Government Code (Texas Sunset Act),

SEC. 7.69. ATTORNEY GENERAL OPINIONS. Cite opinions of the attorney general as follows:

Op. Tex. Att'y Gen. No. GA-318 (2005)

Op. Tex. Att'y Gen. Nos. DM-475 (1998), JC-179 (2000)

Citations to letters advisory and letter opinions omit "Op." and "No." and substitute "LA" or "LO," as appropriate, for the attorney general's initials:

Tex. Att'y Gen. LA-153 (1978)

Tex. Att'y Gen. LO-83 (1974)

After 1978 the year is embedded in the letter number:

Tex. Att'y Gen. LA-98-223

Tex. Att'y Gen. LO-99-113

SEC. 7.70. ETHICS COMMISSION OPINIONS. Cite opinions of the Texas Ethics Commission as follows:

Op. Tex. Ethics Comm'n No. 412 (1999)

SEC. 7.71. TEXAS ADMINISTRATIVE CODE. Citations to the Texas Administrative Code include the title and section:

40 T.A.C. Section 809.15(b)

SEC. 7.72. TEXAS REGISTER. To cite a proposed rule published in the Texas Register, provide the volume, the page on which the rule begins, and the year:

29 Tex. Reg. 7231 (2004)

SEC. 7.73. FEDERAL LAW. (a) Statutes. The usual citation for a federal statute as enacted by the U.S. Congress is:

Pub. L. No. 97-300

A citation to the United States Code contains the title number, followed by "U.S.C." and the chapter or section number:

5 U.S.C. Chapter 85
36 U.S.C. Section 13
42 U.S.C. Section 315 et seq.

A federal statute that uses a popular name includes the U.S.C. citation in parentheses following the name:

Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.)
Section 1321(a)(1), Social Security Act (42 U.S.C. Section 1201),
Sections 203(b), (i), and (k), National Housing Act (12 U.S.C. Section 1709)

Citations to the Internal Revenue Code of 1986 do not require a parenthetical U.S.C. citation:

Section 501(c), Internal Revenue Code of 1986,

(b) Code of Federal Regulations. Cite the Code of Federal Regulations as follows:

14 C.F.R. Part 121
14 C.F.R. Part 121, Subpart J,
14 C.F.R. Section 121.221(a)

(c) Federal Register. Citations to the Federal Register include the volume, the page on which the cited rule or regulation begins, and the date:

69 Fed. Reg. 11735 (March 11, 2004)

Subchapter D
Other Useful Information

SEC. 7.81. DRAFTING CHECKLIST. When a drafter finishes a draft of a bill, the next step is to check for the following:

(1) Is there an enacting clause?

(2) Is there an effective date?

(3) In the caption of the bill are the following included, if applicable:

the imposition of penalties

the imposition or authorization of a tax or changes that affect an existing tax or taxing authority

the making of an appropriation

the granting of authority to issue a bond or other similar obligation or to create a public debt

the granting of the power of eminent domain

(4) Are the sections of the bill numbered consecutively?

(5) Are the sections properly labeled "SECTION" or "Sec."? See Section 7.84.

(6) If there are three or more nonamendatory, substantive sections in the bill, do all the sections have headings?

(7) Does any section of the bill have a Subsection (a) but no Subsection (b)? Or is there a Subsection (b) without a Subsection (a)?

(8) Is the paragraphing correct? Should there be some double or triple paragraphing?

(9) Does the introductory language correctly identify what is being added or amended?

(10) If there is amendatory language, is the bracketing and underlining correct? Does the new language precede the old?

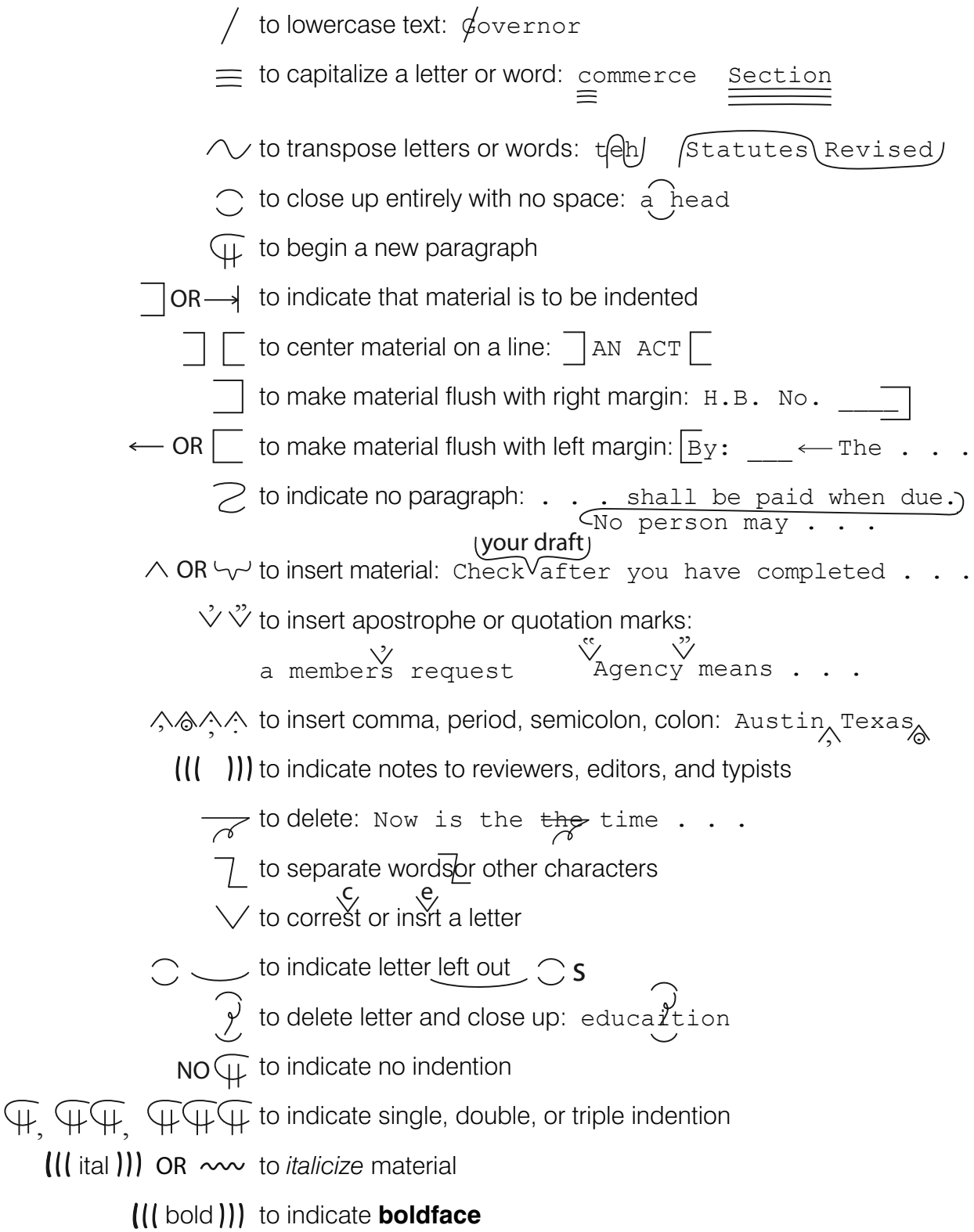
(11) Are all citations in the correct form?

(12) Are General Laws and Special Laws specified in citations for amendatory sections for those legislative sessions that have separately bound laws?

(13) Are the correct names used for state agencies?

(14) If a provision of existing law is renumbered or repealed, are there any cross-references to the provision that need to be corrected?

SEC. 7.82. EDITING MARKS



SEC. 7.83. FORMS OF DOCUMENTS. (a) Indention. Council style is to indent sections and subsections once, subdivisions twice, paragraphs three times, subparagraphs four times, and sub-subparagraphs five times:

```
SECTION 1. HEADING.  (a) (The first subsection)
(b) (Subsection)
     (1) (Subdivision)
         (A) (Paragraph)
             (i) (Subparagraph)
                 (a) (Sub-subparagraph)
```

(b) Code divisions. At levels above those described in Subsection (a), codes are organized as follows:

TITLE
SUBTITLE
CHAPTER
ARTICLE
SUBCHAPTER
PART

Division of chapters into articles and subchapters into parts is generally not necessary and should be resorted to only when other organizational schemes prove insufficient.

(c) Letters. The recommended form for inside address and salutation is:

- For the governor:

  The Honorable Rick Perry
  Governor of Texas
  (((address)))

  Dear Governor Perry:

- For the lieutenant governor:

  The Honorable David Dewhurst
  Lieutenant Governor of Texas
  (((address)))

  Dear Governor Dewhurst:

- For the speaker of the house:

  The Honorable Tom Craddick
  Speaker of the Texas House of Representatives
  (((address)))

  Dear Speaker Craddick:

- For the attorney general:

  The Honorable Greg Abbott
  Attorney General of Texas
  (((address)))

  Dear General Abbott:

- For a committee chair:

  The Honorable Mary Smith
  Chair, House (or Senate) . . . Committee
  (((address)))

  Dear Representative (or Senator) Smith:

- For senators:

  The Honorable Jane Jones
  State Senator
  (((address)))

  Dear Senator Jones:

- For representatives:

  The Honorable John Doe
  State Representative
  (((address)))

  Dear Representative Doe:

If additional material is sent with the letter, write "Enclosure" or "Attachment," as appropriate, under the signature line and flush with the left margin.

(d) Memoranda. Use the following form for memoranda:

M E M O R A N D U M

TO:	The Honorable John Doe State Representative (or State Senator)
FROM:	Place name of author here Place title of author here (e.g., Legislative Counsel)
DATE:	Insert current date here
SUBJECT:	A brief title of the memorandum, such as Constitutional and Legal Issues

A legal memorandum consists of three major sections: Introduction, Summary, and Discussion. The headings for those sections are centered on the page and styled in bold capital letters. A drafter may find it useful for ease of understanding to further subdivide any of those sections using the standard format shown below under "Discussion." The headings for the subdivisions are in boldface with initial caps. The format described here is preferred, but a different format may be used if the different format is more appropriate under the circumstances. When additional material is included with the memorandum, "Attachment" or "Enclosure," as appropriate, should appear at the end, flush with the left margin.

INTRODUCTION

This section usually provides an explanation of the memorandum's purpose or an introduction to the issues it addresses. For instance, the drafter might state here the questions that the memorandum is written in response to.

SUMMARY

This section summarizes the drafter's findings and recommendations, which are described in greater detail in the Discussion section.

DISCUSSION

This section provides a detailed analysis of the facts and authorities that support the conclusions briefly described in the Summary section. Here, the drafter might review and explain the pertinent statutes and precedents and discuss in depth the issues at hand, including by describing opposing viewpoints. This section explains in detail the answers summarized in the previous section.

I. First Level Heading

The first level heading starts with a capital Roman numeral and is flush with the left margin. A space separates the heading from the text above and below it, and the first line of text below the heading is indented once.

A. Second Level Heading

The second level heading starts with a capital letter and is indented once. A space separates the heading from the text above and below it, and the first line of text below the heading is indented once.

1. Third Level Heading

The third level heading starts with an Arabic numeral and is indented twice. A space separates the heading from the text above and below it, and the first line of text below the heading is indented once.

a. Fourth Level Heading

The fourth level heading starts with a lowercase letter and is indented three times. A space separates the heading from the text above and below it, and the first line of text below the heading is indented once.

SEC. 7.84. FORM OF SECTIONS OF BILLS AND JOINT RESOLUTIONS. **(a) Amendatory and nonamendatory language.** The difference in language between amendatory sections and nonamendatory sections is shown by the use of capitalization and abbreviation. Each section of a bill, or of a joint resolution to amend the Texas Constitution, is labeled "SECTION" followed by the appropriate number. A section or article being amended is labeled "Sec." or "Art.", as appropriate, followed by the number.

(b) Headings. Headings of articles and sections are in all capital letters. The text of an article or section immediately follows the heading unless the article is further divided into sections or subdivisions that are labeled as such.

EXAMPLES:

SECTION 1. Section 3, Dredge Materials Act (Article 5415e-4, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. DEFINITIONS. As used in this Act . . . .

SECTION 2. Article 3922, Revised Statutes, is amended to read as follows:

Art. 3922. RAILROAD COMMISSION. The Railroad Commission of Texas . . . .

SECTION 3. Article 42.12, Code of Criminal Procedure, is amended to read as follows:

Art. 42.12. COMMUNITY SUPERVISION

Sec. 1. PURPOSE. It is the purpose of this article . . . .

SEC. 7.85. LEGISLATIVE SESSIONS. Use this list for citing session laws:

39th Regular[1]	1925
1st Called[1]	1926
40th Regular	1927
1st Called	1927
41st Regular	1929
1st Called	1929
2nd Called[1]	1929
3rd Called[1]	1929
4th Called[1]	1930
5th Called[1]	1930
42nd Regular[1]	1931
1st Called	1931
2nd Called	1931
3rd Called	1932
4th Called	1932
43rd Regular[1]	1933
1st Called	1933
2nd Called	1934
3rd Called	1934
4th Called	1934
44th Regular[1]	1935
1st Called	1935
2nd Called	1935
3rd Called	1936
45th Regular	1937
1st Called	1937
2nd Called	1937
46th Regular[1, 2]	1939
47th Regular	1941
1st Called	1941
48th Regular	1943
49th Regular	1945
50th Regular	1947
51st Regular	1949
1st Called	1950
52nd Regular	1951
53rd Regular	1953
1st Called	1954
54th Regular	1955
55th Regular	1957
1st Called	1957
2nd Called	1957
56th Regular	1959
1st Called	1959
2nd Called	1959
3rd Called	1959
57th Regular	1961
1st Called	1961
2nd Called	1961
3rd Called	1962
58th Regular	1963
59th Regular	1965
1st Called	1966
60th Regular	1967
1st Called	1968
61st Regular	1969
1st Called	1969
2nd Called	1969
62nd Regular	1971
1st Called	1971
2nd Called	1972
3rd Called	1972
4th Called	1972
63rd Regular	1973
1st Called	1973
64th Regular	1975
65th Regular	1977
1st Called	1977
2nd Called	1978
66th Regular	1979
67th Regular	1981
1st Called	1981
2nd Called	1982
3rd Called	1982
68th Regular	1983
1st Called	1983
2nd Called	1984
69th Regular	1985
1st Called	1985
2nd Called	1986
3rd Called	1986
70th Regular	1987
1st Called	1987
2nd Called	1987
71st Regular	1989
1st Called	1989
2nd Called	1989
3rd Called	1990
4th Called	1990
5th Called	1990
6th Called	1990
72nd Regular	1991
1st Called	1991
2nd Called	1991
3rd Called	1992
4th Called	1992
73rd Regular	1993
74th Regular	1995
75th Regular	1997
76th Regular	1999
77th Regular	2001
78th Regular	2003
1st Called	2003
2nd Called	2003
3rd Called	2003
4th Called	2004
79th Regular	2005
1st Called	2005
2nd Called	2005
3rd Called	2006
80th Regular	2007

[1]Cite "General Laws" or "Special Laws," as applicable, because chapters of each were numbered separately.

[2]Cite page number as well as chapter number.

SEC. 7.86. NOVEMBER ELECTION DATES, 2007–2020. The first Tuesday after the first Monday in November is shown below for years through 2020:

November 6, 2007	November 4, 2014
November 4, 2008	November 3, 2015
November 3, 2009	November 8, 2016
November 2, 2010	November 7, 2017
November 8, 2011	November 6, 2018
November 6, 2012	November 5, 2019
November 5, 2013	November 3, 2020

See Section 4.08 for a discussion of appropriate dates for submission of proposed amendments to the Texas Constitution.

SEC. 7.87. REGULAR SESSION PERPETUAL CALENDAR

New Year's	Legislature Convenes (Second Tuesday of January)	60-Day Bill Filing Deadline	Adjournment Sine Die (140th Day or 20 Weeks)	Post-Session 20-Day Deadline for Governor to Sign or Veto	Effective Date (91st Day After Adjournment)
Monday January 1	Tuesday January 9	Friday March 9	Monday May 28	Sunday June 17	Monday August 27
Tuesday January 1	Tuesday January 8	Friday March 8	Monday May 27	Sunday June 16	Monday August 26
Wednesday January 1	Tuesday January 14	Friday March 14	Monday June 2	Sunday June 22	Monday September 1
Thursday January 1	Tuesday January 13	Friday March 13	Monday June 1	Sunday June 21	Monday August 31
Friday January 1	Tuesday January 12	Friday March 12	Monday May 31	Sunday June 20	Monday August 30
Saturday January 1	Tuesday January 11	Friday March 11	Monday May 30	Sunday June 19	Monday August 29
Sunday January 1	Tuesday January 10	Friday March 10	Monday May 29	Sunday June 18	Monday August 28

CHAPTER 8
OTHER THINGS A DRAFTER OUGHT TO KNOW

SEC. 8.01. INTRODUCTION. This chapter contains a variety of information and advice that the authors of the manual consider important but could not fit neatly elsewhere. Subjects addressed here include important constitutional rules applicable to the legislative process such as the one-subject rule. The enrolled bill rule, which covers a multitude of legislative procedural sins, is explained. Constitutional limitations on terms of office, which can trip up an unwary drafter, are treated at some length. General laws of drafting significance, such as statutes establishing quorum requirements for state and local boards in general, are discussed. Advice on drafting classification schemes (such as a classification of cities by population or of individuals by age) is also included to help drafters avoid serious blunders that are all too easy to commit. In addition, this chapter addresses conflicting acts of the same session, the legislative council's statutory revision program, and laws amended the same session a code passes. It also discusses incorporating other law by reference. A diagram showing the path a bill follows through the legislative process concludes this chapter.

SEC. 8.02. ONE-SUBJECT RULE. Section 35(a), Article III, Texas Constitution, prescribes the one-subject rule:[1]

> No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject.

The policy behind the one-subject rule is that a legislative proposal should stand on its own merits and not be combined with unrelated proposals to generate broader support.

A bill containing more than one subject is subject to a point of order. A law enacted in violation of the rule is also subject to attack in court; because the existence of more than one subject can be discerned from the face of an act, the enrolled bill rule[2] does not apply.

The critical factor in determining compliance with the one-subject rule is understanding how the courts view the concept of "subject." In other words, how broad may the "subject" of a bill be without violating the rule? The courts have construed the rule liberally, permitting the inclusion of many provisions in a bill so long as there is a single, unifying theme to which every provision is germane[3] or if every provision has a logical relationship or is subsidiary to the same general subject matter.[4] Except for rather well-defined rules to be discussed in connection with general appropriations acts, it is difficult to lay down guidelines for compliance with the unity-of-subject requirement more specific than the general principles the courts have announced. A drafter does not need to be overly concerned with unity of subject so long as everything in a bill is held together by a common logical thread. Nothing

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[1]See Section 3.03 of this manual for a discussion of Sections 35(b) and (c), Article III, which contain the title requirement.

[2]See Section 8.03 of this manual.

[3]*Dellinger v. State,* 28 S.W.2d 537 (Tex. Crim. App. 1930); *Board of School Trustees of Young County v. Bullock Common School District No. 12,* 55 S.W.2d 538 (Tex. Comm'n App. 1932, judgm't adopted).

[4]*City of Beaumont v. Gulf States Utilities Co.,* 163 S.W.2d 426 (Tex. Civ. App.—Beaumont 1942, writ ref'd w.o.m.); *Ex parte Jimenez,* 317 S.W.2d 189 (Tex. 1958).

prohibits "omnibus" legislation if every provision relates to a single subject. For example, an omnibus tax bill may include provisions dealing with all facets of the general subject of financing state government operations, including taxes and fees and their allocation.

A signal that there may be a one-subject problem is difficulty in composing a caption that concisely describes a bill's subject; the inability to write any but an "index caption"[1] is symptomatic of multiple subjects.

It is in drafting amendments of doubtful germaneness,[2] rather than in drafting original bills, that a drafter is more likely to run afoul of the rule. A drafter should be particularly alert for possible violations of the one-subject rule when drafting end-of-the-session floor amendments intended to engraft on a still viable bill the substance of a bill that appears to be dead or dying. Legislators eager to salvage key parts of their legislative programs at the end of a session begin searching for "vehicle bills," that is, bills to which their programs might be added by amendment.[3]

General appropriations acts are given special treatment under the one-subject rule. The constitutional statement of the rule specifically defines the permissible scope of those acts as including "the various subjects and accounts, for and on account of which moneys are appropriated . . . ." The subject of appropriations includes appropriations proper (provisions whose sole purpose is to make state funds available to be spent), and details, limitations, or restrictions pertaining to those appropriations that are not inconsistent with general law. A rider that attempts to make or modify general law is void. For example, the state supreme court invalidated a rider that attempted to require that fees collected by certain public officers be deposited in the state treasury.[4]

Although the "one subject" to which a bill is limited is the one that is "expressed in its title," the courts have not generally focused on the connection between the title and one-subject rules. Courts have not, for example, used the subject as stated in the title as the sole criterion by which to judge compliance with the one-subject rule. Although the title has been considered a relevant factor to the discernment of an act's subject,[5] it is the body of the act that determines compliance with the rule.[6] While a disjointed index caption does not necessarily mean that the bill has more than one subject, it alerts a critical reader to that possibility.

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[1]See Section 3.03(e).

[2]See Section 6.02.

[3]The name has nothing to do with cars and trucks but is derived from the idea that the subject bill is a suitable "vehicle" to carry to fulfillment an otherwise lost cause.

[4]*Moore v. Sheppard,* 192 S.W.2d 559 (Tex. 1946): "We therefore hold that the fixing of fees for furnishing unofficial copies of opinions of the Courts of Civil Appeals, and the disposition of such fees, are matters of general legislation, and are 'subjects' within the meaning of Article III, Section 35, of the Texas Constitution."

[5]*Ex parte White,* 198 S.W. 583 (Tex. Crim. App. 1915).

[6]*Board of School Trustees of Young County v. Bullock Common School District No. 12, supra.*

SEC. 8.03. ENROLLED BILL RULE. Long accepted as a rule of evidence by Texas courts, the enrolled bill rule provides that if an enrolled bill (the version finally passed by the legislature and sent to the governor) appears valid on its face, the court may not, in most cases, look behind the face of the bill to determine whether its enactment was procedurally correct.[1]

In practice, the rule shields from judicial review a variety of legislative irregularities, including:

(1) violation of the three-reading rule (Section 32, Article III, Texas Constitution);[2]

(2) amendment of a law to change its purpose (prohibited by Section 30, Article III, Texas Constitution);[3]

(3) passage of a bill not reported from committee before the last three days of a session (prohibited by Section 37, Article III, Texas Constitution);[4] or

(4) passage of an act at a special session that is outside the governor's "call" (in violation of Section 40, Article III, Texas Constitution).[5]

The enrolled bill rule's power to shield is not absolute, however. By its own terms the rule does not protect against flaws discernible on the face of an act, including violation of the one-subject rule (prescribed by Section 35, Article III, Texas Constitution)[6] or passage of a tax bill originating in the senate (in violation of Section 33, Article III).[7] Also, courts in the past have looked to legislative journals to determine if a bill enacted with an emergency clause received the constitutionally required two-thirds vote for immediate effect.[8] The modern practice of including in the enrolled bill a certification of the vote by which it passed would likely prevent such an inquiry today.

SEC. 8.04. TERMS OF OFFICE. (a) Maximum length. Section 30(a), Article XVI, Texas Constitution, provides that "The duration of all offices not fixed by this Constitution shall never exceed two years." This limitation is sweeping in scope, applying to all state and local offices not covered by a constitutional exception. The exceptions, which are numerous, fall into three classes: provisions fixing longer terms, provisions authorizing the legislature to provide for longer terms, and provisions authorizing the voters of a political subdivision to adopt longer terms. A law providing for a term of office longer than two years is valid only if it is authorized by and complies with one of those constitutional provisions.

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[1]*Williams v. Taylor,* 19 S.W. 156 (Tex. 1892); *Teem v. State,* 183 S.W. 1144 (Tex. Crim. App. 1916); *Jackson v. Walker,* 49 S.W.2d 693 (Tex. 1932).

[2]*Usener v. State,* 8 Cr.R. 177 (1880); *Williams v. Taylor, supra*.

[3]*Parshall v. State,* 138 S.W. 759 (Tex. Crim. App. 1911); *Knox v. State,* 138 S.W. 787 (Tex. Crim. App. 1911); *Harris Co. v. Hammond,* 203 S.W. 445 (Tex. Civ. App.—Galveston 1918, writ ref'd); see also Section 6.02 of this manual.

[4]*Williams v. Taylor, supra.*

[5]*Jackson v. Walker, supra; City of Houston v. Allred,* 71 S.W.2d 251 (Tex. Comm'n App. 1934, opinion adopted); *Maldonado v. State,* 473 S.W.2d 26 (Tex. Crim. App. 1971).

[6]No case has been found in which the possibility that the enrolled bill rule might apply to the one-subject or caption rule was discussed; there are numerous cases in which laws have been held invalid for violation of the caption rule; for a one-subject rule case, see *Moore v. Sheppard, supra.*

[7]See Braden et al., *The Constitution of the State of Texas: An Annotated and Comparative Analysis,* p. 167.

[8]*Williams v. Taylor, supra; Missouri, K. & T. Ry. Co. v. McGlamory,* 41 S.W. 466 (Tex. 1897).

The constitutional term-of-office exceptions are listed in the following tables:

TABLE 1
CONSTITUTIONALLY FIXED TERMS OF MORE THAN TWO YEARS

Office	Duration of Term	Constitutional Provision
Governor	4 years	Sec. 4, Art. IV
Lieutenant governor	4 years	Sec. 16, Art. IV
Secretary of state	"during the term of service of the Governor"	Sec. 21, Art. IV
Attorney general	4 years	Sec. 23, Art. IV
Comptroller, land commissioner	4 years	Sec. 23, Art. IV
Railroad commissioner	6 years (staggered)	Sec. 30, Art. XVI
Any statutory office elected statewide and not covered by another constitutional term-of-office provision[1]	4 years	Sec. 23, Art. IV
State senator	4 years[2]	Sec. 3, Art. III
Justice of supreme court	6 years	Sec. 2, Art. V
Judge of court of criminal appeals	6 years	Sec. 4, Art. V
Member, judicial conduct commission	6 years (staggered)	Sec. 1-a, Art. V
Justice of court of appeals	6 years	Sec. 6, Art. V
District judge	4 years	Sec. 7, Art. V
Judge of statutory county court	4 years	Secs. 64, 65, Art. XVI
County judge ("constitutional county judge")	4 years	Sec. 15, Art. V; Secs. 64, 65, Art. XVI
County commissioner	4 years	Sec. 18, Art. V; Secs. 64, 65, Art. XVI
Justice of the peace	4 years	Sec. 18, Art. V; Secs. 64, 65, Art. XVI
Constable	4 years	Sec. 18, Art. V; Secs. 64, 65, Art. XVI
Clerk of supreme court, court of criminal appeals, court of appeals	4 years	Sec. 5a, Art. V
District clerk	4 years	Sec. 9, Art. V; Secs. 64, 65, Art. XVI

[1]The position of commissioner of agriculture is at present the only office in this class.

[2]Some senate terms are shortened to two years to reestablish staggering after a reapportionment.

TABLE 1 (continued)		
County clerk	4 years	Sec. 20, Art. V; Secs. 64, 65, Art. XVI
County or district attorney	4 years	Sec. 21, Art. V; Secs. 64, 65, Art. XVI
Sheriff	4 years	Sec. 23, Art. V; Secs. 64, 65, Art. XVI
County treasurer	4 years	Secs. 44, 64, 65, Art. XVI
County surveyor	4 years	Secs. 44, 64, 65, Art. XVI
Other elective district, county, and precinct offices that "heretofore had terms of two years"	4 years	Secs. 64, 65, Art. XVI

TABLE 2

AUTHORIZATION FOR LEGISLATURE TO PROVIDE FOR TERMS LONGER THAN TWO YEARS

Office	Duration of Term	Constitutional Provision
Member of state board or commission (including the "Board of Regents of the State University")[1]	6 years (staggered)	Sec. 30a, Art. XVI
Offices of "the public school system" and of "State institutions of higher education"	Not to exceed 6 years	Sec. 16-a, Art. VII
Member of State Board of Education	Not to exceed 6 years	Sec. 8, Art. VII
Director of water or navigation district	Not to exceed 4 years	Sec. 30, Art. XVI
Member of hospital district governing board	Not to exceed 4 years	Sec. 30, Art. XVI
Notary public	Not less than 2 or more than 4 years	Sec. 26, Art. IV
Municipal civil service[2]	No limit stated	Sec. 30b, Art. XVI

[1]To the extent this provision, which was adopted in 1912, applies to the regents of The University of Texas, it must be read together with the next listed exception (Section 16-a, Article VII), which dates from 1928.

[2]The significance of this provision is debatable; see the discussion in the *Annotated Texas Constitution.* This constitutional authorization applies both to statutes and to municipal charters; hence its inclusion in both this table and the following one.

TABLE 3 AUTHORIZATION FOR VOTERS TO ADOPT TERMS LONGER THAN TWO YEARS		
Office	**Duration of Term**	**Constitutional Provision**
Elective or appointive municipal office	Not to exceed 4 years	Sec. 11, Art. XI
Municipal civil service[1]	No limit stated	Sec. 30b, Art. XVI

(b) Six-year staggered terms. The constitutional exception to the two-year limit on terms of office of probably the greatest significance to legislative drafting is the authorization for six-year staggered terms in Section 30a, Article XVI:

> The Legislature may provide by law that the Board of Regents of the State University and boards of trustees or managers of the educational, eleemosynary, and penal institutions of the State, and such boards as have been, or may hereafter be established by law, may be composed of an odd number of three or more members who serve for a term of six (6) years, with one-third, or as near as one-third as possible, of the members of such boards to be elected or appointed every two (2) years in such manner as the Legislature may determine; vacancies in such offices to be filled as may be provided by law, and the Legislature shall enact suitable laws to give effect to this section. The Legislature may provide by law that a board required by this constitution be composed of members of any number divisible by three (3) who serve for a term of six (6) years, with one-third of the members elected or appointed every two (2) years.

Two observations about the drafting significance of Section 30a should be made. First, the provision applies only to *state*, and not local government, boards.[2] Second, according to the attorney general, voting ex officio members of a board are to be included in determining the number of members for purposes of Section 30a.[3]

[1]See footnote 2 in Table 2.

[2]*San Antonio I.S.D. v. State ex rel. Dechman,* 173 S.W. 525 (Tex. Civ. App.—San Antonio 1915, writ ref'd); see also *Lower Colorado River Authority v. McCraw,* 83 S.W.2d 629 (Tex. 1935).

[3]Op. Tex. Att'y Gen. No. GA-21 (2003).

Drafting a Provision to Provide for Six-Year Staggered Terms

To create a board with six-year staggered terms, the following format is recommended:

```
[PERMANENT PROVISION]

   Sec. 24.031. WIDGET BOARD. (a) The widget board is
composed of nine members appointed by the governor with
the advice and consent of the senate.

   (b) Members of the board serve staggered terms of six
years, with one-third of the members' terms expiring
February 1 of each odd-numbered year.

[TRANSITION PROVISION]

   SECTION 19. INITIAL APPOINTEES. In appointing the
initial members of the widget board, the governor shall
appoint three persons to terms expiring February 1, 2011,
three to terms expiring February 1, 2013, and three to
terms expiring February 1, 2015.
```

Note that the preceding example, in which the number of members is a multiple of three, states that one-third, rather than a specific number, of the members' terms expire every other year. A fraction, unlike a whole number, requires no adjustment if the size of the board is changed by amendment to another number divisible by three. (Concerning the relationship between the size of a board and quorum requirements, see Section 8.05.)

If the number of members of a board is not a multiple of three, the permanent provision should recognize the size of the respective classes. For that purpose, the following format is recommended (note that the transition clause establishes the two-two-three expiration cycle of a seven-member board):

```
[PERMANENT PROVISION]

   Sec. 24.031. WIDGET BOARD. (a) The widget board is
composed of seven members appointed by the governor with
the advice and consent of the senate.

   (b) Members of the board serve staggered terms of six
years, with either two or three members' terms, as applicable,
expiring February 1 of each odd-numbered year.

[TRANSITION PROVISION]

   SECTION 19. INITIAL APPOINTEES. In appointing the
initial members of the widget board, the governor shall
appoint two persons to terms expiring February 1, 2011,
two to terms expiring February 1, 2013, and three to
terms expiring February 1, 2015.
```

The date on which terms are set to expire is important. The legislative council customarily provides in bills it drafts that terms expire February 1 of odd-numbered years, a date that falls in the first few weeks of a regular legislative session. This provides the senate an opportunity

to fully exercise its confirmation authority, reducing the likelihood of an interim appointment on expiration of a term.[1] It is also important to coordinate the date on which the provision authorizing initial appointments takes effect with the expiration dates of the initial terms to ensure that no initial term is scheduled to be longer than six years.

The examples authorize the governor to determine which of the initial appointees falls into each of the three membership classes for the staggering of terms. Although this is the usual method of handling the matter, an alternative is to require the initial appointees to determine by lot which fall into each class.

Note, finally, that using a transition provision to set the expiration dates for the initial terms avoids the inclusion in permanent law of material that will become deadwood soon after the law takes effect.

Drafting a Provision to Expand a Board With Six-Year Staggered Terms

Drafting legislation to expand the membership of a board whose members serve six-year staggered terms is much the same as the creation of such a board, consisting of an amendment to the statute fixing the size of the board plus a transition provision to provide for appointment of the additional members. The drafter must be alert to the need to make conforming amendments to other provisions, such as a provision that uses whole numbers to define a quorum. (See the discussion of quorum requirements in Section 8.05.) The following format is recommended:

[AMENDMENT OF STATUTE]

SECTION 1. Sections 24.031(a) and (b), Widget Code, are amended to read as follows:

(a) The widget board is composed of 11 [~~nine~~] members appointed by the governor with the advice and consent of the senate.

(b) Members of the board serve staggered terms of six years, with either three or four [~~one-third of the~~] members' terms, as applicable, expiring February 1 of each odd-numbered year.

[TRANSITION PROVISION]

SECTION 2. Promptly after this Act takes effect, the governor shall appoint two additional members to the widget board. In appointing those members, the governor shall appoint one person to a term expiring February 1, 2011, and one to a term expiring February 1, 2013.

Most of the drafting considerations applicable to creation of a board of this type also apply to the expansion of membership,[2] including the need to coordinate the effective date of the expansion with the expiration date of the terms of the new appointees so that no

[1]See the discussion of Section 12, Article IV, Texas Constitution, in the *Annotated Texas Constitution,* concerning interim appointments and senate confirmation.

[2]See, however, the following discussion of special considerations that must be given to composition of a quorum for an expanded board.

initial term is longer than six years. Also, the terms of new appointees must coincide with the established term structure of the board. If the statute does not state when terms expire, that information may be obtained from the Legislative Reference Library.

Drafting a Provision to Exempt Current Board Members From Changes in Qualifications or Prohibitions

If the law relating to qualifications of, or prohibitions applying to, board members is changed, it may be appropriate to exempt current board members from the changes. The following format is recommended:

> [AMENDMENT OF STATUTE]
>
> SECTION 1. Section 24.031, Widget Code, is amended by adding Subsection (c) to read as follows:
>
> (c) A person may not serve as a member of the board if the person is required to register under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.
>
> [TRANSITION PROVISION]
>
> SECTION 2. The changes in law made by this Act in the qualifications of, and the prohibitions applying to, members of the widget board do not affect the entitlement of a member serving on the board immediately before the effective date of this Act to continue to carry out the board's functions for the remainder of the member's term. The changes in law apply only to a member appointed on or after the effective date of this Act. This Act does not prohibit a person who is a member of the board on the effective date of this Act from being reappointed to the board if the person has the qualifications required for a member under Section 24.031, Widget Code, as amended by this Act.

SEC. 8.05. QUORUM REQUIREMENTS FOR GOVERNMENTAL BODIES. The most important drafting advice about specifying the quorum requirement for a state or local governmental board or commission is that it is usually unnecessary to do so. Section 312.015, Government Code, provides that "A majority of a board or commission established under law is a quorum unless otherwise specifically provided." This provision has been construed as requiring the presence of a majority of the number of members fixed by law, as opposed to the number of members actually serving; a vacant position does not reduce the number of members required for a quorum.[1]

Section 311.013(b), Government Code, is of the same effect, providing that "A quorum of a public body is a majority of the number of members fixed by statute." Therefore, the only legal reason to address the quorum issue is to provide a different rule.

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[1] *Thomas v. Abernathy County Line I.S.D.,* 290 S.W. 152 (Tex. Comm'n App. 1927); Op. Tex. Att'y Gen. No. O-761 (1939).

When a quorum *is* specified, it is best to express the requirement as a fraction of the membership rather than as a specific number of members. A fractional requirement adjusts automatically to an amendment changing the size of the board or commission, while a whole number does not.

An increase in the number of members of a governmental body can create a practical problem that calls for specific transition language. Because a quorum is generally a majority of the membership fixed by law, a quorum may be especially hard to obtain in the period between enactment of the increase and appointment of the new members. For that reason, the following nonamendatory language is recommended:

> Until all appointees have taken office, a quorum of the (board) (commission) is a majority of the number of members who are qualified.

SEC. 8.06. VALIDATING ACTS. Validating acts are statutes enacted to cure defects in the past official proceedings of governmental entities. Validation of local governments' proceedings is most common although occasionally the legislature validates actions by state agencies.

Validating legislation is often introduced to facilitate the issuance of local government bonds when there is reason to believe that a past procedural irregularity of the local government, if not validated, might affect the bonds' validity.

Most validating acts are relatively simple, consisting essentially of a statement that certain proceedings of governmental entities of a certain class are validated. The following act is typical:

> [TITLE AND ENACTING CLAUSE]
>
> SECTION 1. APPLICATION. This Act applies to a municipality with a population of 5,000 or more that annexed or attempted to annex territory before January 1, 2009.
>
> SECTION 2. PROCEEDINGS VALIDATED. (a) The governmental acts and proceedings of the municipality relating to the annexation or attempted annexation of territory by the municipality are validated as of the dates they occurred. The acts and proceedings may not be held invalid because they were not performed in accordance with Chapter 42 or 43, Local Government Code, or other law.
>
> (b) The governmental acts and proceedings of the municipality occurring after the annexation or attempted annexation may not be held invalid on the ground that the annexation or attempted annexation, in the absence of this Act, was invalid.

(c) This Act does not validate a governmental act or proceeding relating to the municipality's annexation or attempted annexation of territory in the extraterritorial jurisdiction of another municipality without the consent of that municipality in violation of Chapter 42 or 43, Local Government Code.

SECTION 3. EFFECT ON LITIGATION. This Act does not apply to any matter that on the effective date of this Act:

(1) is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court; or

(2) has been held invalid by a final judgment of a court.

There is no such thing as a "standard" validating act, although certain versions, with variations, are commonly introduced at most regular sessions. A drafter often can find a bill or act from a previous session to use as a model for practically any circumstance. Care should be taken to avoid validating more than the client desires to cure. If, for example, a client wishes to cure certain "technical" violations of the open meetings law (Chapter 551, Government Code) without granting a wholesale forgiveness for all violations, a validating statute may be limited in application, subject to local and special law limitations to be discussed, along the following lines:

SECTION 1. Action taken before the effective date of this Act by the governing body of a general-law municipality may not be held invalid on the ground that notice of the meeting was not posted at least 72 hours in advance if the notice was published at least 60 hours in advance and the publication was otherwise done as required by law.

A validating act applies only to events occurring before its effective date;[1] this is only logical since a "validating act" of prospective application would not really be a validating act at all but, in effect, a repeal of the legal requirements, violation of which it purports to cure.

The retrospective application of these statutes might appear to violate the constitutional prohibition against retroactive laws,[2] but the courts have not so held. The general rule in Texas is that the legislature may validate any governmental action that it could have authorized in advance.[3] Actually, the chief ground for unconstitutionality a drafter should watch for is the Section 56, Article III, prohibition of local and special laws. A legislator hoping to minimize anticipated opposition to a proposed validating act sometimes wishes to use a

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[1]A validating act that takes effect the standard 90 days after adjournment would appear to validate not only conduct occurring before its passage but conduct occurring after passage but before its effective date; no case law on this point has been found.

[2]Section 16, Article I, Texas Constitution.

[3]See, for example, *City of Mason v. West Texas Utilities Co.,* 237 S.W.2d 273 (Tex. 1951); *Louisiana Ry. & Nav. Co. v. State,* 298 S.W. 462 (Tex. Civ. App.—Dallas 1927), *aff'd*, 7 S.W.2d 71 (Tex. Comm'n App. 1928, judgm't adopted); *Miller v. State ex rel. Abney,* 155 S.W.2d 1012 (Tex. Civ. App.—Waco 1941, writ ref'd).

population classification or similar device to narrow the act's application.[1] This sometimes presents a dilemma because an overly narrow classification scheme not reasonably related to the purpose of the act will violate Section 56, Article III, while a reasonable, constitutional classification may be too broad to neutralize the opposition. The unhappy fact is that a validating act of doubtful constitutionality is hardly worth passing; a validating act will naturally be subjected to scrutiny and it is very unlikely that a constitutional flaw will go unnoticed.

A section that appears in almost every validating act is the so-called "nonlitigation clause," which exempts from the act's curative powers matters involved in pending litigation or (probably unnecessarily) that have been finally held invalid by a court. Political, rather than constitutional, necessity requires the clause: the legislature is loath to throw a litigant out of the courthouse, so to speak, which is what could happen if an irregularity that was a key issue in a pending lawsuit were validated. The usual nonlitigation clause appears in the preceding sample validating act as Section 3.

A particular type of irregularity that often is the object of validation is the annexation of a territory by a municipality without full compliance with Chapters 42 and 43, Local Government Code. It is customary to include in such acts an exemption from validation of annexations outside a municipality's extraterritorial jurisdiction. (See Section 2(c) of the preceding sample act.) The justification for this customary exemption is that the annexation of remote territory is a substantive, rather than procedural, violation of the annexation law. It should also be noted that the state supreme court has held that an act validating municipal annexations generally, but not expressly purporting to validate the annexation of noncontiguous territory, will not be construed as having that effect.[2]

Since 1999, the number of validating acts enacted in regard to municipal acts and proceedings has been reduced by the enactment of Section 51.003, Local Government Code. That section has the effect of automatically validating municipal acts and proceedings if certain conditions are met. Exceptions to the validation are described by Section 51.003. The section provides, in part:

> (a) A governmental act or proceeding of a municipality is conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable statutes and ordinances if:
>
> (1) the third anniversary of the effective date of the act or proceeding has expired; and
>
> (2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before that third anniversary.

SEC. 8.07. CLASSIFICATION SCHEMES. When classifying individuals, political subdivisions, or other entities into groups according to age, population, or other criteria, care should be taken to ensure that no entity is inadvertently assigned to more than one group and that no entity "falls between the cracks." The following classification has both these faults:

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[1]Drafters should note that Rule 8, Section 10, of the house of representatives, prohibits the house or a committee from considering "a bill whose application is limited to one or more political subdivisions by means of population brackets or other artificial devices in lieu of identifying the political subdivision or subdivisions by name." Exempted from this prohibition is legislation classifying subdivisions by population "or other criterion that bears a reasonable relation to the purpose of the proposed legislation . . . ." This rule, in effect, does not limit consideration of legislation complying with Section 56, Article III, but forces bills that violate that provision to be drafted in a way that makes the violation obvious. See Section 8.07 of this manual for more information about classification schemes.

[2]*City of Waco v. City of McGregor,* 523 S.W.2d 649 (Tex. 1975).

Sec. 3.01. CLASSES OF COUNTIES. For purposes of this chapter, counties are classified as follows:

(1) Class A includes all counties with a population of less than 5,000;

(2) Class B includes all counties with a population of more than 5,000 but not more than 25,000; and

(3) Class C includes all counties with a population of 25,000 or more.

There is a hiatus between Classes A and B: neither includes a county with a population of exactly 5,000. Also, a county with a population of exactly 25,000 is included in both Classes B and C.

A standard format is helpful to avoid these problems. The following may be used for population classifications, using the same number to express the upper limit of one class and the lower limit of the next higher class:

(1) . . . a population of *less than* 5,000;

(2) . . . a population of 5,000 *or more* but *less than* 25,000; and

(3) . . . a population of 25,000 *or more*.

Section 311.015, Government Code, provides "If a statute refers to a series of numbers or letters, the first and last numbers or letters are included." Therefore, in codes to which that section applies, the following format may be used:

(1) . . . a population of 5,000 or less;

(2) . . . a population of 5,001 to 24,999; and

(3) . . . a population of 25,000 or more.

While it once was customary to provide that population is "according to the most recent federal census," this qualification is unnecessary. Sections 311.005 and 312.011, Government Code, define "population" to mean "the population shown by the most recent federal decennial census."

Many statutes that use a population bracket to limit application are unconstitutional because they violate Section 56, Article III, Texas Constitution, which prohibits the legislature from passing local laws regulating the affairs of counties or municipalities. However, a law that uses a population bracket to limit its application to a class of counties or municipalities does not violate Section 56 if, after considering the subject of the law, one finds a reasonable justification for applying the law to that particular class of counties or municipalities and not to counties or municipalities outside the class.[1]

[1]*Miller v. El Paso County,* 150 S.W.2d 1000 (Tex. 1941); *Smith v. Decker,* 312 S.W.2d 632 (Tex. 1958); *Robinson v. Hill,* 507 S.W.2d 521 (Tex. 1974). See also Appendix 7.

SEC. 8.08. CONFLICTING ACTS OF THE SAME SESSION. Common law provides that acts on the same subject are to be taken together and construed so that, if possible, effect is given to all the provisions of each.[1] This rule applies to acts passed at the same legislative session and applies with even greater force to acts passed on the same day. If it is impossible to read the acts together so that effect may be given to both, the latest enactment is to be read as an implied repeal of the earlier act to the extent of the conflict. These common law rules are codified in Sections 311.025 and 312.014, Government Code.

For one act to be given effect in favor of another, the acts must be in *irreconcilable* conflict, meaning that it is impossible to give effect to one act without abrogating the intended effect of the other act. The rule of giving effect to the last act is a mechanical rule that creates a fictional legislative intent, and it is used by courts and others construing statutes only if other evidence of legislative intent is not apparent.

Most conflicts between acts of the same session occur in amendatory acts in which more than one bill amends the same section of law.[2] Many of the apparent conflicts created by multiple amendments may be resolved by examining the underlined and bracketed changes in the respective bills to determine legislative intent. Sections 311.025(c) and 312.014(c), Government Code, are designed to facilitate the reconciliation of multiple amendments by recognizing that the constitutional prohibition on amendments by reference in Section 36, Article III, Texas Constitution, accounts for the majority of multiple amendments. Accordingly, these rules of construction provide that a bill that reenacts text in compliance with the constitutional requirement "does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment."

The "date of enactment" is defined by statute to mean the date of the last legislative vote. Generally, that action will be passage by the second house, concurrence by the house of origin in amendments of the second house, or adoption of a conference committee report. If the journals and other legislative records fail to disclose which measure is latest in date of enactment, the date of enactment of the respective bills is considered to be, in order of priority, the date on which the last presiding officer signed the bill, the date on which the governor signed the bill, or the date on which the bill became law by operation of law.

Relative effective dates may also be used to resolve apparent conflicts. For example, if the act that is later in order of passage is also later in effective date, it is possible that the earlier of the acts will be effective in the interim between two effective dates.

SEC. 8.09. CONTINUING STATUTORY REVISION PROGRAM. The Texas Legislative Council is required by Section 323.007, Government Code, to carry out a complete nonsubstantive revision of the Texas statutes. The process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable—all toward promoting the stated purpose of making the statutes "more accessible, understandable, and usable" without altering the sense, meaning, or effect of the law. Before the initiation of this program, Texas statutes were last revised in 1925.

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[1]See *Wright v. Broeter,* 196 S.W.2d 82 (Tex. 1946); *Ex Parte De Jesus de la O,* 227 S.W.2d 212 (Tex. Crim. App. 1950); *Garrison v. Richards,* 107 S.W. 861 (Tex. Civ. App.—1908, writ dism'd w.o.j.); Op. Tex. Att'y Gen. No. MW-139 (1980).

[2]See Section 3.10(c) for a discussion of language used to introduce an amendment or a merging ("reenactment") of a statute published in multiple versions.

The 1925 Revised Statutes was a complete reenactment of all Texas law. The statutes were arranged alphabetically by subject (beginning with "accountants" and ending with "wrecks") and numbered sequentially from Article 1 to Article 8324. Laws enacted after 1925 that did not amend the Revised Statutes have been arranged unofficially and assigned an article number by a private publisher, now Thomson West. In assigning article numbers, Thomson West editors are forced to add a letter or number suffix to a whole number because the 1925 revision left no room for expansion (e.g., between Articles 5159 and 5160, the editors added Articles 5159a–5159c). Because of its private work in arranging uncodified Texas statutes, Thomson West has succeeded in defending a proprietary interest in its arrangement of Texas statutes. That proprietary interest does not extend to the codes enacted under the continuing statutory revision program.

As the result of this history, the user of Vernon's Texas Civil Statutes must wade through numerous printed statutes that are legally ineffective, must sort out surplus from substance, must adapt to confusing inconsistency of expression, capitalization, spelling, and punctuation, and must try to comprehend an alphabetical arrangement and often bizarre numbering scheme. The statutory revision program was created with the recognition that Texas statutes are difficult to use and difficult to understand. The complexity of modern law further dictates both revision and a sensible statutory arrangement.

The continuing statutory revision program was created by a 1963 statute, which also created a statutory revision advisory committee. With the assistance of council staff, the committee prepared for adoption by the council a classification plan for Texas statutes and proposed a numbering and format system for the codes. Under the Texas statutory revision program, all Texas statutes will eventually be contained in one of 27 topical codes. The current state of the program is described at the end of this section.

The revision program should not be confused with a mere compilation of previously enacted statutes; revision is a labor-intensive process that involves complete redrafting of the statutory language. Members of the council legal staff spend most of their work time during a legislative interim on statutory revision projects. After the staff proposes and the council approves a project, the legal division director names a senior staff attorney as chief revisor. The chief revisor is responsible for collecting the source law from which the new code (or title within a code) will be drawn, proposing an arrangement for the code, and assigning the work among the council attorneys assigned to the project. Work is usually assigned on a chapter-by-chapter basis. The attorney reviews in detail the statutes assigned to that chapter, reads and analyzes the case law interpreting those statutes, identifies provisions that are invalid, duplicative, or ineffective, and redrafts those statutes into a single, well-organized, well-written statute that conforms to the format and consistent manner of expression in the enacted codes. The attorney's work product is prepared into a working draft that is meticulously reviewed by the chief revisor and at least two other experienced attorneys. After legal staff review, the draft is prepared as a preliminary draft and distributed to interested persons outside the agency for review and comment.

The council staff usually prepares a proposed code in the form of a revisor's report arranged to facilitate review. In the report, each section of new law is presented as "Revised Law," which is immediately followed by the text of the statute from which the revised law is derived, identified as the "Source Law." If necessary or appropriate, the source law is followed by a "Revisor's Note" that explains changes and omissions made by the revisor other than those necessary to restate the law in modern American English. The revisor's report also includes disposition tables so that an interested person may quickly find the

revised version of a particular statute. The revisor's report may also include conforming amendments to other laws made necessary by the revision as well as a list of the statutes to be repealed. Revisor's reports are distributed to any interested person, and questions, comments, and suggestions are solicited.

For some projects, depending largely on the size and scope of the project, the council staff asks the joint chairs of the council to appoint an advisory committee to assist the staff in review of a proposed code. Some advisory committees include only legislative members, and some include other knowledgeable and interested persons. Advisory committees usually hold one or two public hearings on a proposed code to solicit public review and comment.

The statutory revision program is a continuing program that does not end even when the 27th code is enacted. The statute establishing the program calls for a "systematic and continuous study of the statutes of this state." Some of the earliest codes enacted, such as the Education Code, have undergone further revision in recent years. In addition, the legislature in each session enacts statutes that should have been codified in a previously enacted code but were not so codified. As a result, each interim the council legal staff also prepares an "update" bill that conforms the enacted codes to acts of the last legislature, codifies laws in the appropriate topical code, conforms recently enacted codes to other statutes enacted by the same legislature, and eliminates duplicate section numbers.

Statutory revision is an integral part of the whole legal staff mission. The work done by staff attorneys on statutory revision enables the attorneys to become substantive experts in the area of law being revised and provides training in drafting techniques and statutory analysis.

When the legislative council's statutory revision program is completed, all permanent statutes will be incorporated into the following 27 codes:

Agriculture Code
Alcoholic Beverage Code
Business & Commerce Code
Business Organizations Code
Civil Practice and Remedies Code
Criminal Procedure Code
Education Code
Election Code
Estates and Guardianships Code (name tentative)
Family Code
Finance Code
Government Code
Health and Safety Code
Human Resources Code
Insurance Code
Labor Code
Local Government Code
Natural Resources Code
Occupations Code
Parks and Wildlife Code
Penal Code
Property Code
Special District Local Laws Code
Tax Code
Transportation Code
Utilities Code
Water Code

The following are the codes that have been enacted and titles of codes that have been partially enacted and their years of enactment. Two or more dates indicate that the code was adopted in segments.

Agriculture Code (1981)
Alcoholic Beverage Code (1977)
Business & Commerce Code (1967)[1]
Business Organizations Code (2003)[2]
Civil Practice and Remedies Code (1985)
Education Code (1969, 1971)[3]
Election Code (1985)[4]
Family Code (1969, 1973)[4]
Finance Code (1997)
Government Code
- Judicial Branch and Legislative Branch titles (1985)
- Executive Branch title (1987)
- Public Retirement Systems title (1989)
- Intergovernmental Relations title (1991)
- Open Government and Ethics title (1993)
- Public Officers and Employees title (1993)
- General Government title (1993)
- Public Securities title (1999)

Health and Safety Code (1989, 1991)
Human Resources Code (1979)
Insurance Code (1999, 2001, 2003, 2005, 2007) (part)[5]
Labor Code (1993)
Local Government Code (1987)
Natural Resources Code (1977)
Occupations Code (1999, 2001)
Parks and Wildlife Code (1975)
Penal Code (1973)[4]
Property Code (1983)
Special District Local Laws Code (2003, 2005, 2007) (part)[6]
Tax Code (1979, 1981)[4]
Transportation Code (1995)
Utilities Code (1997)
Water Code (1971)

The following codes have not yet been enacted:

Criminal Procedure Code[7]
Estates and Guardianships Code (name tentative)

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[1]Title 4 was further revised and reorganized and Titles 5 through 15 and 99 were added in 2007, effective April 1, 2009.

[2]The Business Organizations Code was drafted by the Codification Committee of the Business Law Section of the State Bar of Texas. It was enacted in 2003 and took effect January 1, 2006.

[3]Titles 1 and 2 were substantively revised in 1995.

[4]The Election Code, Family Code, Penal Code, and Title 1, Tax Code, were substantive revisions for which the council provided drafting assistance. Title 2, Family Code, was further revised and Title 5 of that code was added in 1995. The Penal Code was substantively revised in 1993.

[5]As part of the council's statutory revision program, Title 2 was enacted in 1999, Titles 6 and 7 and part of Title 8 were enacted in 2001, Titles 3, 5, 9, 11, and 13 and the rest of Title 8 were enacted in 2003, and Titles 4, 10, 12, and 14 were enacted in 2005. Title 20 was enacted in 2007, along with several newly revised chapters and sections that were incorporated into existing titles. Title 1 includes provisions of the Insurance Code of 1951, as amended, that have not been revised as part of the council's statutory revision program. It is appropriate to cite articles in Title 1 as part of the "Insurance Code."

[6]The large volume of statutes codified by this code requires that it be enacted in stages.

[7]A Title 2, Code of Criminal Procedure, was enacted in 1985 and codified miscellaneous criminal procedure statutes omitted from the 1965 code.

SEC. 8.10. LAWS AMENDED THE SAME SESSION A CODE PASSES. Perhaps the most common question asked of council staff concerning a code bill is: "How does the code affect a bill passed the same session that amends one or more of the laws codified?"

Fortunately, the legislature foresaw this question soon after establishing the council's continuing statutory revision program (Section 323.007, Government Code) and included a provision in the Code Construction Act (Chapter 311, Government Code) that specifically addresses the question. Section 311.031(c) of that act (which was enacted the same session as the first of the council's codes) provides:

> (c) The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature that enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

The issue has arisen with every code the legislature has adopted, and the courts have recognized and given effect to the Code Construction Act provision. See, for example, the decision in *Miller v. State,* 708 S.W.2d 436 (Tex. Crim. App. 1984). In that case, the court decided that an amendment to a law codified the same session in the Penal Code was to be given effect even though clearly in conflict with the new Penal Code provision.

Each session the council legal staff closely monitors the progress of bills that amend laws that are source law for a code being considered at the same time. If the code is adopted early enough in the session, the staff prepares conforming amendments to bills that should amend the new code. Most often, however, the new code will be conformed to other acts of the same legislature at the next legislative session. See, for example, Senate Bill 49 from the 2nd Called Session of the 68th Legislature (Chapter 18, Acts of the 68th Legislature, 2nd Called Session, 1984), which conformed the new Property Code adopted in the regular session to other acts of the same regular session.

SEC. 8.11. INCORPORATION BY REFERENCE. (a) Incorporation of statutory language by reference. In certain circumstances, a drafter may find it useful to incorporate another statute, or part of another statute, by reference. For example:

```
The penalty may be waived in situations in which
penalties would be waived under Section 111.103, Tax
Code.

Except as provided by Section 551.126, Government Code,
the board shall hold regular quarterly meetings in the
city of Austin.
```

This tool of legislative drafting should be used with caution. A drafter should be mindful that, under Sections 311.027 and 312.008, Government Code, any amendments to the referenced statute will automatically be incorporated into the meaning of the referencing statute.[1]

[1]Section 311.027, Government Code, which applies to statutes subject to the Code Construction Act, provides, "[u]nless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule." Section 312.008, Government Code, which applies to all civil statutes, provides, "[u]nless expressly provided otherwise, a reference to any portion of a statute, rule, or regulation applies to all reenactments, revisions, or amendments of the statute, rule, or regulation."

Because Sections 311.027 and 312.008 alter the common law rule, which limits "specifically" referenced statutes to their content at the time of incorporation,[1] it is unnecessary for the drafter to expressly incorporate future amendments by including a phrase such as "as amended" or "and its subsequent amendments." On the other hand, if a drafter does not wish to incorporate future amendments or desires to incorporate a referenced statute as it exists on a particular date, the drafter must expressly limit the scope of the incorporation. For example:

```
Subsections (a)-(d) do not apply to a person who has
complied with the requirements of Section 382.060, as
it existed on November 30, 2007.
```

(b) Incorporation of definition by reference. A drafter may find it useful to incorporate a definition by reference when the drafter desires that a term in one statute have the same meaning over time that the term has in a separate statute. For example:

```
   Sec. 1.202. DEFINITION. In this subchapter, "fish
farming" has the meaning assigned by Section 134.001,
Agriculture Code.
```

Because of the operation of Sections 311.027 and 312.008, Government Code, a drafter should incorporate a definition by reference only when the drafter wishes to maintain parallel meaning between the statutes over time and not merely to save words.

(c) Special considerations when referencing or incorporating law not enacted by Texas Legislature. On occasion, a drafter may wish to reference or to incorporate by reference a rule, regulation, or statute that has not been enacted by the Texas Legislature, such as a federal statute or a statute enacted by another state legislature. For example:

```
   (a) An organization is exempt from this chapter if
the organization qualifies for a tax exemption under
Section 501(a), Internal Revenue Code of 1986, as an
organization described by Section 501(c)(4) of that
code.
```

The *general rule* for drafting in this circumstance is identical to the general rule for referencing or incorporating by reference other Texas statutes: a drafter should not use language such as "as amended" or "and its subsequent amendments" to incorporate subsequent amendments. With respect to referencing or incorporating by reference rules, regulations, and statutes other than statutes enacted by the Texas Legislature, this represents a drafting policy change for the Texas Legislative Council that began with the regular session of the 79th Legislature in 2005. This departure from previous drafting policies is based on the council's reconsidered legal opinion that Sections 311.027 and 312.008, Government Code, apply by their terms to these types of references and incorporations by reference.[2]

---

[1]The common law rule that incorporation by reference to specific law incorporates only the provisions referred to "at the time of adoption without subsequent amendments" is explained in Singer, *Sutherland Statutory Construction* Section 51.08, at 270 (6th ed. 2000).

[2]See memorandum in Appendix 9.

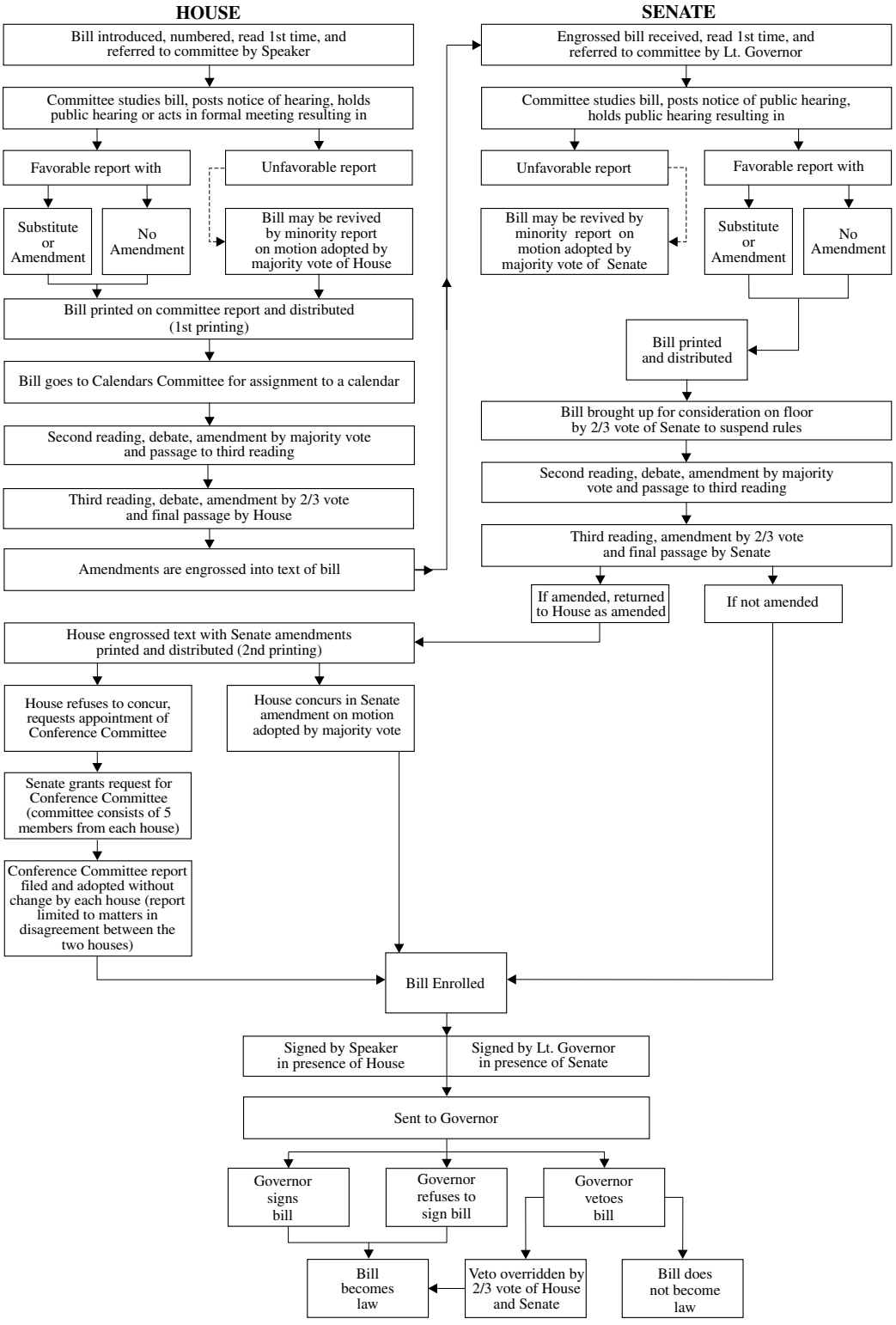
In addition to the general rule, a drafter should note three important considerations:

(1) Phrases such as "as amended" and "and its subsequent amendments" were commonly used by drafters in the past to incorporate the subsequent amendments of rules, regulations, and statutes other than statutes enacted by the Texas Legislature. These references are found throughout the existing statutes, and drafters should not remove them when amending nearby law for the sole purpose of "cleaning up" the statutes.

(2) Because "as amended" and "and its subsequent amendments" are found throughout the existing statutes, there is *one drafting exception to the general rule*. This exception arises when a drafter is asked to reference a rule, regulation, or statute that was not enacted by the Texas Legislature, such as a federal statute, by adding the reference to an existing statute that contains in close proximity a reference to a statute "as amended" or "and its subsequent amendments." If the drafter determines that, by applying the general rule and leaving out an "as amended" type of reference the drafter would create a confusing contrast on the face of the law that in the opinion of the drafter might mislead the reader into thinking that there is a substantive difference in the way the new and existing references should be interpreted, the drafter should, in the interests of clarity and consistency, include a reference to the amendments of the referenced statute.

(3) A drafter should note that incorporation by reference of rules, regulations, and statutes that have not been enacted by the Texas Legislature, such as federal statutes, will in some circumstances raise a question regarding whether the incorporation by reference is an unconstitutional delegation of legislative power. In *Ex parte Elliott*, 973 S.W.2d 737 (Tex. App.—Austin 1998, pet. ref'd), a Texas appellate court held that provisions of the Texas Solid Waste Disposal Act that defined "solid waste" to mean waste identified as hazardous by the Environmental Protection Agency under certain federal statutes did not result in an unconstitutional delegation of state legislative authority to a federal agency because the Texas statute could be narrowly construed, even in the face of a reference to a federal statute "as amended," as merely adopting certain federal laws and rulemaking acts that were in existence *at the time the referencing Texas statute was enacted*. The court suggested that but for this narrow construction, the court would have found that the statute would have unconstitutionally delegated to the federal government the power to determine the definition of "solid waste" under the Texas law.

SEC. 8.12. THE LEGISLATIVE PROCESS IN TEXAS. This diagram displays the sequential flow of a bill from the time it is introduced in the house of representatives to final passage and transmittal to the governor. A bill introduced in the senate would follow the same procedure in reverse.



Appendixes

Appendix 1

2000 Texas Census City Summary

According to the official returns of the 22nd Decennial Census of the United States, as released by the Bureau of the Census on March 12, 2001.

(Ranked by population)

Texas Legislative Council
August 2001

Population in Texas Cities and CDPs
2000 Unadjusted Census Data

City or CDP*	Population
Houston	1,953,631
Dallas	1,188,580
San Antonio	1,144,646
Austin	656,562
El Paso	563,662
Fort Worth	534,694
Arlington	332,969
Corpus Christi	277,454
Plano	222,030
Garland	215,768
Lubbock	199,564
Irving	191,615
Laredo	176,576
Amarillo	173,627
Pasadena	141,674
Brownsville	139,722
Grand Prairie	127,427
Mesquite	124,523
Abilene	115,930
Beaumont	113,866
Waco	113,726
Carrollton	109,576
McAllen	106,414
Wichita Falls	104,197
Midland	94,996
Richardson	91,802
Odessa	90,943
San Angelo	88,439
Killeen	86,911
Tyler	83,650
Denton	80,537
Lewisville	77,737
Longview	73,344
College Station	67,890
Baytown	66,430
Bryan	65,660
Sugar Land	63,328
Round Rock	61,136
Victoria	60,603
Port Arthur	57,755
Harlingen	57,564
Galveston	57,247
The Woodlands*	55,649

City or CDP*	Population
North Richland Hills	55,635
Temple	54,514
McKinney	54,369
Missouri City	52,913
Flower Mound	50,702
Edinburg	48,465
Bedford	47,152
Pharr	46,660
Euless	46,005
League City	45,444
Mission	45,408
Rowlett	44,503
Allen	43,554
Grapevine	42,059
Texas City	41,521
Haltom City	39,018
DeSoto	37,646
Pearland	37,640
Conroe	36,811
New Braunfels	36,494
Spring*	36,385
Hurst	36,273
Duncanville	36,081
Coppell	35,958
Atascocita*	35,757
Sherman	35,082
Huntsville	35,078
Texarkana	34,782
San Marcos	34,733
Del Rio	33,867
Frisco	33,714
Fort Hood*	33,711
Lufkin	32,709
Cedar Hill	32,093
La Porte	31,880
Mission Bend*	30,831
Nacogdoches	29,914
Channelview*	29,685
Copperas Cove	29,592
Friendswood	29,037
Deer Park	28,520
Georgetown	28,339
Mansfield	28,031

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Farmers Branch	27,508
Keller	27,345
Socorro	27,152
Weslaco	26,935
The Colony	26,531
Lake Jackson	26,386
San Juan	26,229
Cedar Park	26,049
Cleburne	26,005
Paris	25,898
Lancaster	25,894
Kingsville	25,575
Big Spring	25,233
Corsicana	24,485
Rosenberg	24,043
Greenville	23,960
Marshall	23,935
Cloverleaf*	23,508
San Benito	23,444
University Park	23,324
Denison	22,773
Eagle Pass	22,413
Plainview	22,336
Seguin	22,011
Watauga	21,908
Southlake	21,519
Waxahachie	21,426
Alvin	21,413
Burleson	20,976
Kerrville	20,425
Benbrook	20,208
Colleyville	19,636
Balch Springs	19,375
Alice	19,010
Weatherford	19,000
Brownwood	18,813
Schertz	18,694
Bay City	18,667
Orange	18,643
Angleton	18,130
Rockwall	17,976
Pampa	17,887
West Odessa*	17,799
Palestine	17,598
Nederland	17,422
Harker Heights	17,308
Dickinson	17,093
Mineral Wells	16,946

City or CDP*	Population
Canyon Lake*	16,870
Pflugerville	16,335
Ennis	16,045
South Houston	15,833
Jollyville*	15,813
Groves	15,733
Stafford	15,681
Bellaire	15,642
Gatesville	15,591
Gainesville	15,538
Brushy Creek*	15,371
Wylie	15,132
Uvalde	14,929
Stephenville	14,921
Universal City	14,849
White Settlement	14,831
Portland	14,827
Donna	14,768
Alamo	14,760
Belton	14,623
Hereford	14,597
Humble	14,579
Sulphur Springs	14,551
Borger	14,302
West University Place	14,211
Addison	14,166
Aldine*	13,979
Mount Pleasant	13,935
Jacksonville	13,868
New Territory*	13,861
Dumas	13,747
La Marque	13,682
Mercedes	13,649
Terrell	13,606
Port Neches	13,601
Taylor	13,575
Pecan Grove*	13,551
Brenham	13,507
Beeville	13,129
Forest Hill	12,949
Canyon	12,875
Levelland	12,866
Robstown	12,727
Freeport	12,708
Saginaw	12,374
Highland Village	12,173
Port Lavaca	12,035
Rio Grande City	11,923

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Katy	11,775
Vernon	11,660
Lockhart	11,615
Converse	11,508
Vidor	11,440
Sweetwater	11,415
Corinth	11,325
Kilgore	11,301
Athens	11,297
Henderson	11,273
Wells Branch*	11,271
Cinco Ranch*	11,196
Hewitt	11,085
Richmond	11,081
San Elizario*	11,046
El Campo	10,945
Burkburnett	10,927
Seagoville	10,823
Snyder	10,783
Galena Park	10,592
La Homa*	10,433
Clute	10,424
Jacinto City	10,302
Bonham	9,990
Lamesa	9,952
Sachse	9,751
Raymondville	9,733
Andrews	9,652
Roma	9,617
Azle	9,600
Santa Fe	9,548
Pecos	9,501
Brownfield	9,488
Seabrook	9,443
Ingleside	9,388
Eidson Road*	9,348
Leon Valley	9,239
Wharton	9,237
Bellmead	9,214
Live Oak	9,156
Tomball	9,089
Webster	9,083
Rendon*	9,022
Anderson Mill*	8,953
Fredericksburg	8,911
Highland Park	8,842
Woodway	8,733
Lumberton	8,731

City or CDP*	Population
Graham	8,716
Kirby	8,673
Bridge City	8,651
Pleasanton	8,266
Fort Bliss*	8,264
Jasper	8,247
Hillsboro	8,232
Aransas Pass	8,138
Richland Hills	8,132
Fabens*	8,043
Liberty	8,033
Lakeway	8,002
Hondo	7,897
Fort Stockton	7,846
Robinson	7,845
Perryton	7,774
Commerce	7,669
Cleveland	7,605
Leander	7,596
Midlothian	7,480
Crowley	7,467
Rockport	7,385
Hidalgo	7,322
Alamo Heights	7,319
Dalhart	7,237
Glenn Heights	7,224
Gonzales	7,202
Crystal City	7,190
Pearsall	7,157
Crockett	7,141
Lackland AFB*	7,123
Highlands*	7,089
River Oaks	6,985
Bacliff*	6,962
Jersey Village	6,880
Windemere*	6,868
Monahans	6,821
Homestead Meadows South*	6,807
Navasota	6,789
Lampasas	6,786
Childress	6,778
Carthage	6,664
Greatwood*	6,640
Marlin	6,628
West Livingston*	6,612
Fresno*	6,603
Eagle Mountain*	6,599
Cuero	6,571

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Mexia	6,563
Littlefield	6,507
Kaufman	6,490
Iowa Park	6,431
Silsbee	6,393
Hitchcock	6,386
Trophy Club	6,350
Palmview South*	6,219
Boerne	6,178
Lake Dallas	6,166
La Feria	6,115
Slaton	6,109
Gladewater	6,078
Cameron Park*	5,961
Seminole	5,910
Edna	5,899
Timberwood Park*	5,889
Breckenridge	5,868
Floresville	5,868
Kennedale	5,850
Everman	5,836
Alpine	5,786
Lacy-Lakeview	5,764
Atlanta	5,745
Yoakum	5,731
Granbury	5,718
Kermit	5,714
Dayton	5,709
Elgin	5,700
Center	5,678
Sinton	5,676
Carrizo Springs	5,655
Cameron	5,634
White Oak	5,624
Forney	5,588
Rio Bravo	5,553
Elsa	5,549
Brady	5,523
Diboll	5,470
Abram-Perezville*	5,444
Rockdale	5,439
Livingston	5,433
Briar*	5,350
Whitehouse	5,346
Bastrop	5,340
Kyle	5,314
Falfurrias	5,297
Sealy	5,248

City or CDP*	Population
Horizon City	5,233
Bowie	5,219
Decatur	5,201
Palacios	5,153
Gun Barrel City	5,145
Shady Hollow*	5,140
Canutillo*	5,129
Wake Village	5,129
Coleman	5,127
Tulia	5,117
Giddings	5,105
Windcrest	5,105
Rusk	5,085
Luling	5,080
Nurillo*	5,056
Alton North*	5,051
Mathis	5,034
Terrell Hills	5,019
Keene	5,003
Marble Falls	4,959
Meadows Place	4,912
Mila Doce*	4,907
Palmhurst	4,872
Port Isabel	4,865
Zapata*	4,856
Progreso	4,851
New Boston	4,808
Gilmer	4,799
San Diego	4,753
Burnet	4,735
Camp Swift*	4,731
Lost Creek*	4,729
McGregor	4,727
Fair Oaks Ranch	4,695
Hempstead	4,691
Hearne	4,690
Lakehills*	4,668
Lake Worth	4,618
Kingsland*	4,584
Teague	4,557
Mineola	4,550
Sanger	4,534
Jacksboro	4,533
Muleshoe	4,530
Joshua	4,528
Los Fresnos	4,512
Lago Vista	4,507
Hebbronville*	4,498

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Comanche	4,482
La Grange	4,478
Lopezville*	4,476
Cockrell Hill	4,443
Prairie View	4,410
Alton	4,384
Dimmitt	4,375
Hunters Creek Village*	4,374
San Leon*	4,365
Pittsburg	4,347
Bridgeport	4,309
Red Oak	4,301
Groesbeck	4,291
Helotes	4,285
Colorado City	4,281
Pinehurst* (Montgomery County)	4,266
Doffing*	4,256
West Columbia	4,255
Ballinger	4,243
Homestead Meadows North*	4,232
Castle Hills	4,202
Sansom Park	4,181
Nassau Bay	4,170
Presidio	4,167
Madisonville	4,159
Heath	4,149
Devine	4,140
West Orange	4,111
Palmview	4,107
Central Gardens*	4,106
Sullivan City	3,998
Denver City	3,985
Willis	3,985
Midway North*	3,946
Columbus	3,916
Smithville	3,901
Clarksville	3,883
Friona	3,854
Bolivar Peninsula*	3,853
Cisco	3,851
Anthony	3,850
Westway*	3,829
Wimberley*	3,797
Bellville	3,794
Hudson	3,792
Eastland	3,769
Bulverde	3,761
Whitesboro	3,760

City or CDP*	Population
Dublin	3,754
Jourdanton	3,732
Post	3,708
Taylor Lake Village	3,694
Floydada	3,676
Dilley	3,674
Eagle Lake	3,664
Bunker Hill Village	3,654
Little Elm	3,646
Stamford	3,636
Sweeny	3,624
Cotulla	3,614
Spring Valley	3,611
Redwood*	3,586
Winnsboro	3,584
El Cenizo	3,545
Pecan Plantation*	3,544
Clifton	3,542
Pilot Point	3,538
Wills Point	3,496
Kenedy	3,487
Princeton	3,477
Salado*	3,475
Karnes City	3,457
Brookshire	3,450
Caldwell	3,449
Ozona*	3,436
Ovilla	3,405
Rosita North*	3,400
Olney	3,396
Taft	3,396
Wilmer	3,393
Piney Point Village	3,380
Port Aransas	3,370
Clyde	3,345
Edcouch	3,342
Horseshoe Bay*	3,337
Llano Grande*	3,333
Llano	3,325
Bishop	3,305
Poteet	3,305
La Joya	3,303
Canton	3,292
Alvarado	3,288
Laureles*	3,285
Scenic Oaks*	3,279
Henrietta	3,264
Freer	3,241

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Nocona	3,198
Crane	3,191
Electra	3,168
Grape Creek*	3,138
Farmersville	3,118
West Lake Hills	3,116
Haskell	3,106
South Alamo*	3,101
Murphy	3,099
Fairfield	3,094
El Lago	3,075
Manvel	3,046
Cibolo	3,035
Grand Saline	3,028
Quanah	3,022
Spearman	3,021
Balcones Heights	3,016
Richwood	3,012
Oak Ridge North	2,991
Morgan's Point Resort	2,989
Hollywood Park	2,983
Hamilton	2,977
Sparks*	2,974
Hooks	2,973
Medina*	2,960
Royse City	2,957
Four Corners*	2,954
Lindale	2,954
West Sharyland*	2,947
Refugio	2,941
Sonora	2,924
Winnie*	2,914
Tahoka	2,910
Seymour	2,908
Lucas	2,890
Big Lake	2,885
Winters	2,880
Cienegas Terrace*	2,878
Barrett*	2,872
Willow Park	2,849
Abernathy	2,839
Santa Rosa	2,833
Roanoke	2,810
Hutchins	2,805
Scissors*	2,805
Brazoria	2,787
Crandall	2,774
Hallsville	2,772

City or CDP*	Population
Premont	2,772
Reno (Lamar County)	2,767
Mauriceville*	2,743
Primera	2,723
Trinity	2,721
Schulenburg	2,699
Sunnyvale	2,693
West	2,692
Las Lomas*	2,684
Castroville	2,664
San Carlos*	2,650
Fairview	2,644
Merkel	2,637
San Saba	2,637
Junction	2,618
Needville	2,609
Panhandle	2,589
Early	2,588
Ranger	2,584
Rosita South*	2,574
Bloomington*	2,562
Eden	2,561
Anson	2,556
Stanton	2,556
Wolfforth	2,554
Combes	2,553
Edgecliff Village	2,550
Cactus	2,538
McQueeney*	2,527
George West	2,524
Daingerfield	2,517
Van Alstyne	2,502
Odem	2,499
Wild Peach Village*	2,498
Memphis	2,479
Howe	2,478
Oak Trail Shores*	2,475
San Augustine	2,475
Newton	2,459
Olivarez*	2,445
Reno (Parker County)	2,441
Van Horn	2,435
De Leon	2,433
South Padre Island	2,422
Woodville	2,415
Buda	2,404
Blue Mound	2,388
Lytle	2,383

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Hudson Bend*	2,369
Argyle	2,365
Van	2,362
Comfort*	2,358
Doolittle*	2,358
La Blanca*	2,351
Overton	2,350
Hallettsville	2,345
Olmos Park	2,343
Hedwig Village	2,334
Seagraves	2,334
Kemah	2,330
Mont Belvieu	2,324
Gregory	2,318
Pantego	2,318
Wyldwood*	2,310
Pecan Acres*	2,289
Olton	2,288
Mount Vernon	2,286
Tool	2,275
Wellington	2,275
Pinehurst (Orange County)	2,274
Mart	2,273
Yorktown	2,271
Buna*	2,269
Hale Center	2,263
Malakoff	2,257
Linden	2,256
Ralls	2,252
Morton	2,249
Hamlin	2,248
Fritch	2,235
Canadian	2,233
Laughlin AFB*	2,225
Anahuac	2,210
Dalworthington Gardens	2,186
Nixon	2,186
Double Oak	2,179
La Casita-Garciasville*	2,177
Ferris	2,175
Nash	2,169
Idalou	2,157
Mabank	2,151
Cooper	2,150
Nolanville	2,150
Mason	2,134
Jones Creek	2,130
Westworth Village	2,124

City or CDP*	Population
Glen Rose	2,122
Marfa	2,121
Onion Creek*	2,116
Kountze	2,115
Beverly Hills	2,113
Encantada-Ranchito El Calaboz*	2,100
Chandler	2,099
Prosper	2,097
Waller	2,092
Shallowater	2,086
Kirbyville	2,085
Hickory Creek	2,078
Shiner	2,070
Huntington	2,068
Waskom	2,068
Springtown	2,062
North Alamo*	2,061
Fifth Street*	2,059
Lockney	2,056
Granite Shoals	2,040
Indian Hills*	2,036
Las Quintas Fronterizas*	2,030
Quitman	2,030
Shamrock	2,029
Shepherd	2,029
Jefferson	2,024
Circle D-KC Estates*	2,010
Italy	1,993
Stratford	1,991
Laguna Heights*	1,990
Weimar	1,981
Krum	1,979
Goliad	1,975
Clarendon	1,974
Lyford	1,973
Uvalde Estates*	1,972
Panorama Village	1,965
Brookside Village	1,960
Escobares*	1,954
Eldorado	1,951
Sunray	1,950
Troup	1,949
Val Verde Park*	1,945
Rio Hondo	1,942
Stinnett	1,936
Liberty*	1,935
Elm Creek*	1,928
Seth Ward*	1,926

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Albany	1,921
Ganado	1,915
Sienna Plantation*	1,896
Vinton	1,892
Justin	1,891
Lake Kiowa*	1,883
Garden Ridge	1,882
Three Rivers	1,878
Brackettville	1,876
St. Hedwig	1,875
Bovina	1,874
Crosbyton	1,874
Sebastian*	1,864
Celina	1,861
Hughes Springs	1,856
Poth	1,850
Archer City	1,848
Serenada*	1,847
Leonard	1,846
Laredo Ranchettes*	1,845
Whitney	1,833
Sheldon*	1,831
Northcliff*	1,819
McCamey	1,805
Buffalo	1,804
Goldthwaite	1,802
Combine	1,788
Inez*	1,787
Rancho Alegre*	1,775
Palmer	1,774
De Kalb	1,769
Rancho Viejo	1,754
Shavano Park	1,754
Oak Point	1,747
Honey Grove	1,746
Ingram	1,740
Whitewright	1,740
East Bernard*	1,729
La Rosita*	1,729
Aledo	1,726
Corrigan	1,721
Taft Southwest*	1,721
Crosby*	1,714
Fort Hancock*	1,713
Midway South*	1,711
Somerville	1,704
Lake Brownwood*	1,694
North Escobares*	1,692

City or CDP*	Population
Buchanan Dam*	1,688
Benavides	1,686
Woodsboro	1,685
La Victoria*	1,683
Jonestown	1,681
Kerens	1,681
Bartlett	1,675
Sour Lake	1,667
Las Palmas-Juarez*	1,666
Potosi*	1,664
Natalia	1,663
Garfield*	1,660
Laguna Vista	1,658
Menard	1,653
Beach City	1,645
Little River-Academy	1,645
Bayou Vista	1,644
Charlotte	1,637
Hudson Oaks	1,637
La Puerta*	1,636
Pinewood Estates*	1,633
Holliday	1,632
Lone Star	1,631
Baird	1,623
Bangs	1,620
Queen City	1,613
Danbury	1,611
Monte Alto*	1,611
Rotan	1,611
Tornillo*	1,609
Barton Creek*	1,589
Heidelberg*	1,586
Hubbard	1,586
Sabinal	1,586
Pottsboro	1,579
Stowell*	1,572
Wolfe City	1,566
Muenster	1,556
Fulton	1,553
Somerset	1,550
Dripping Springs	1,548
Southside Place	1,546
Munday	1,527
Cross Mountain*	1,524
Blanco	1,505
Pelican Bay	1,505
Sundown	1,505
Itasca	1,503

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Shenandoah	1,503
Aubrey	1,500
Paducah	1,498
Rosebud	1,493
The Hills	1,492
La Pryor*	1,491
Meridian	1,491
Bruceville-Eddy	1,490
Porter Heights*	1,490
Shoreacres	1,488
Franklin	1,470
Cesar Chavez*	1,469
West Tawakoni	1,462
Shady Shores	1,461
Grapeland	1,451
Plains	1,450
Blossom	1,439
Garceno*	1,438
Los Alvarez*	1,434
Lorena	1,433
Evadale*	1,430
Calvert	1,426
Van Vleck*	1,411
Naples	1,410
Liberty Hill	1,409
Rollingwood	1,403
Moody	1,400
Stockdale	1,398
Bogata	1,396
Patton Village	1,391
Parker	1,379
Roscoe	1,378
Troy	1,378
Wheeler	1,378
Flatonia	1,377
Lorenzo	1,372
Quinlan	1,370
Farwell	1,364
Old River-Winfree	1,364
Grandview	1,358
Seadrift	1,352
Melissa	1,350
Edgewood	1,348
Bevil Oaks	1,346
Asherton	1,342
Hico	1,341
Hawkins	1,331
Milam*	1,329

City or CDP*	Population
Booker	1,315
Claude	1,313
La Villa	1,305
Woodbranch	1,305
Granger	1,299
Batesville*	1,298
Palm Valley	1,298
Meadowlakes	1,293
Big Sandy	1,288
Orange Grove	1,288
Rocksprings	1,285
Roman Forest	1,279
Thorndale	1,278
Splendora	1,275
Woodcreek	1,274
Boling-Iago*	1,271
Petersburg	1,262
LaCoste	1,255
Hutto	1,250
China Grove	1,247
Iraan	1,238
Gorman	1,236
Collinsville	1,235
Gunter	1,230
Lowry Crossing	1,229
Anna	1,225
Knox City	1,219
Copper Canyon	1,216
Elkhart	1,215
La Grulla	1,211
Frankston	1,209
Oak Leaf	1,209
Clear Lake Shores	1,205
Manor	1,204
Anton	1,200
Hart	1,198
Olmito*	1,198
Gardendale*	1,197
Oyster Creek	1,192
Johnson City	1,191
Alto	1,190
Bells	1,190
Deweyville*	1,190
Lexington	1,178
Tatum	1,175
Onalaska	1,174
Wallis	1,172
Robert Lee	1,171

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Penitas	1,167
Gruver	1,162
Cut and Shoot	1,158
Tye	1,158
Bullard	1,150
Caddo Mills	1,149
Los Indios	1,149
Seven Points	1,145
Crowell	1,141
Markham*	1,138
Haslet	1,134
Kemp	1,133
Valley Mills	1,123
Bertram	1,122
South Point*	1,118
Rogers	1,117
China	1,112
Magnolia	1,111
Earth	1,109
Annetta	1,108
Groveton	1,107
Hemphill	1,106
Muniz*	1,106
Ore City	1,106
Runaway Bay	1,104
Holland	1,102
Boyd	1,099
Marion	1,099
Holiday Lakes	1,095
Timpson	1,094
Bartonville	1,093
Trinidad	1,091
Spur	1,088
Wortham	1,082
Santa Anna	1,081
Sterling City	1,081
Runge	1,080
Ames	1,079
Bronte	1,076
Jamaica Beach	1,075
Cross Plains	1,068
White Deer	1,060
Florence	1,054
Fort Davis*	1,050
Arcola	1,048
Tenaha	1,046
Lakeside (Tarrant County)	1,040
Sudan	1,039

City or CDP*	Population
Daisetta	1,034
Hill Country Village	1,028
Maud	1,028
Talty	1,028
Lasara*	1,024
Aspermont	1,021
Emory	1,021
Tiki Island	1,016
Skidmore*	1,013
O'Donnell	1,011
Ransom Canyon	1,011
Alvord	1,007
Harper*	1,006
Kempner	1,004
Omaha	999
New Summerfield	998
Southmayd	992
New London	987
Lakeside City	984
Blue Berry Hill*	982
Clint	980
Pineland	980
Louise*	977
St. Jo	977
Riesel	973
San Manuel-Linn*	958
Bandera	957
Martindale	953
New Waverly	950
Chico	947
Pleak	947
Waelder	947
Moulton	944
Citrus City*	941
Tom Bean	941
Vega	936
Coahoma	932
La Vernia	931
Los Villareales*	930
Plum Grove	930
Joaquin	925
Gholson	922
Northlake	921
North San Pedro*	920
Wink	919
McLendon-Chisholm	914
Venus	910
Throckmorton	905

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Centerville	903
Krugerville	903
Arp	901
Briarcliff	895
Berryville	891
Villa Verde*	891
Siesta Shores*	890
Santa Clara	889
Newark	887
Godley	879
Cottonwood Shores	877
New Fairview	877
Bremond	876
Hebron	874
Redwater	872
San Felipe	868
Blessing*	861
Jewett	861
Lakeport	861
Sanderson*	861
Aurora	853
Red Lick	853
San Ignacio*	853
Dawson	852
Miles	850
Savoy	850
Pine Island	849
Coolidge	848
Santa Maria*	846
Garrison	844
Mertzon	839
Rising Star	835
Blooming Grove	833
Falcon Lake Estates*	830
McLean	830
Kress	826
Driscoll	825
Lake Tanglewood	825
Camp Wood	822
Celeste	817
Clarksville City	806
Iowa Colony	804
Reid Hope King*	802
Rankin	800
Chillicothe	798
Eustace	798
Rice	798
Brownsboro	796

City or CDP*	Population
Point	792
Amherst	791
Lindsay (Cooke County)	788
Selma	788
Mustang Ridge	785
Lometa	782
Petrolia	782
Point Comfort	781
Detroit	776
East Tawakoni	775
Silverton	771
Wells	769
Surfside Beach	763
Arroyo Colorado Estates*	755
Hardin	755
Walnut Springs	755
Tioga	754
Beckville	752
Maypearl	746
Larga Vista*	742
Matador	740
Knippa*	739
Strawn	739
Agua Dulce* (El Paso County)	738
Agua Dulce (Nueces County)	737
Valley View	737
Campbell	734
Log Cabin	733
Arroyo Gardens-La Tina Ranch*	732
Del Sol-Loma Linda*	726
Lott	724
Hillcrest	722
Green Valley Farms*	720
Hilshire Village	720
Lakeshore Gardens-Hidden Acres*	720
Normangee	719
Deport	718
Simonton	718
Fulshear	716
Tuscola	714
Oak Grove	710
Thrall	710
New Deal	708
Crawford	705
Big Wells	704
Sunrise Beach Villa	704
Rule	698
Bailey's Prairie	694

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Roxton	694
Spring Garden-Terra Verde*	693
Bluetown-Iglesia Antigua*	692
Coldspring	691
Milford	685
Cumings*	683
Payne Springs	683
San Perlita	680
Fairchilds	678
Roby	673
Blue Ridge	672
Pecan Hill	672
Mountain City	671
San Pedro*	668
Kenefick	667
Ladonia	667
Elmendorf	664
New Hope	662
Trenton	662
Ingleside on the Bay	659
Meadow	658
Westover Hills	658
Bee Cave	656
Loraine	656
Rio Vista	656
Kingsbury*	652
Frost	648
Happy	647
Zavalla	647
Hawley	646
Hungerford*	645
Moore*	644
Colmesneil	638
Cushing	637
Weston	635
Pine Forest	632
Santa Cruz*	630
St. Paul (Collin County)	630
Encinal	629
Morning Glory*	627
Como	621
Geronimo*	619
Cumby	616
Roma Creek*	610
Skellytown	610
Lovelady	608
Pettus*	608
Cross Roads	603

City or CDP*	Population
Ector	600
Fronton*	599
Josephine	594
Murchison	592
Falls City	591
Weir	591
Beasley	590
Miami	588
Groom	587
Niederwald	584
Bardwell	583
Winona	582
East Mountain	580
Graford	578
South Toledo Bend*	576
Newcastle	575
Talco	570
Alto Bonito*	569
Snook	568
Nevada	563
North Pearsall*	561
Lefors	559
Point Blank	559
Annetta South	555
Leary	555
New Chapel Hill	553
Rhome	551
Carrizo Hill*	548
Lolita*	548
Solis*	545
Hackberry	544
St. Paul* (San Patricio County)	542
Indian Lake	541
Damon*	535
Sierra Blanca*	533
Wilson	532
Bryson	528
Balmorhea	527
Owl Ranch-Amargosa*	527
Lake City	526
Mount Enterprise	525
Thornton	525
Easton	524
Lone Oak	521
Ranchos Penitas West*	520
Rose City	519
Hallsburg	518
Byers	517

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Lincoln Park	517
Ropesville	517
Nome	515
Noonday	515
Jayton	513
Texline	511
La Presa*	508
Ponder	507
Falcon Mesa*	506
Tolar	504
Winfield	499
Fate	497
Kosse	497
Turkey	494
Briaroaks	493
Buffalo Springs	493
Mirando City *	493
Alice Acres*	491
Montgomery	489
Morgan	485
Morgan Farm Area*	484
Rose Hill Acres	480
Smyer	480
Oakwood	471
Rancho Banquete*	469
Stonewall*	469
Annetta North	467
New Berlin	467
Kendleton	466
Whiteface	465
Avinger	464
Buffalo Gap	463
Avery	462
Paradise	459
Oglesby	458
Gustine	457
Hawk Cove	457
Marathon*	455
Stagecoach	455
Wickett	455
Smiley	453
Havana*	452
Alfred-South La Paloma*	451
Gordon	451
Highland Haven	450
Garrett	448
Pattison	447
Appleby	444

City or CDP*	Population
Thorntonville	442
Hartley*	441
Windthorst	440
Scotland	438
Howardwick	437
Christine	436
Sandy Hollow-Escondidas*	433
Quitaque	432
Marshall Creek	431
Sandia*	431
Alba	430
Imperial*	428
Higgins	425
Lipan	425
Riverside	425
Golinda	423
Christoval*	422
Edroy*	420
Dodd City	419
Fruitvale	418
Grey Forest	418
Devers	416
Star Harbor	416
Port Mansfield*	415
Dell City	413
Bruni*	412
Follett	412
South Mountain	412
Vanderbilt*	411
Orchard	408
Pleasant Valley	408
Barstow	406
Timbercreek Canyon	406
Chireno	405
Mildred	405
Liverpool	404
Post Oak Bend City	404
Sadler	404
Los Ebanos*	403
Blanket	402
Oak Valley	401
Chula Vista-River Spur*	400
Milano	400
Oak Ridge (Kaufman County)	400
Blum	399
Chula Vista-Orason*	394
Lindsay* (Reeves County)	394
Evant	393

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Hermleigh*	393
Grandfalls	391
Westminster	390
Coyote Acres*	389
Buckholts	387
Lavon	387
Leakey	387
Bellevue	386
Uhland	386
Villa Pancho*	386
Bonney	384
San Leanna	384
Hedley	379
Rosser	379
Gallatin	378
Rochester	378
Bloomburg	375
Knollwood	375
Lake Bridgeport	372
Texhoma	371
Callisburg	365
Sunset Valley	365
Tierra Grande*	362
Bayside	360
Bear Creek	360
Blackwell	360
Iredell	360
Burton	359
Enchanted Oaks	357
Bixby*	356
Channing	356
Nazareth	356
La Paloma*	354
Lawn	353
Millsap	353
Palisades	352
K-Bar Ranch*	350
Richland Springs	350
West Pearsall*	349
Faysville*	348
Union Grove	346
Zuehl*	346
Warren City	343
Lakewood Village	342
Dean	341
Eureka	340
Retreat	339
Sunset	339

City or CDP*	Population
Morgan's Point	336
Cranfills Gap	335
Falcon Heights*	335
Leroy	335
Angus	334
Ranchitos Las Lomas*	334
Lakeside (San Patricio County)	333
Dickens	332
Reklaw	327
Lozano*	324
Bayview	323
Cove	323
La Paloma-Lost Creek*	323
Nordheim	323
Edom	322
Goree	321
Yantis	321
Arroyo Alto*	320
New Home	320
Paint Rock	320
San Patricio	318
Trent	318
Kennard	317
Burke	315
Poynor	314
Granjeno	313
Mount Calm	310
Oilton*	310
Rancho Chico*	309
Tehuacana	307
Bigfoot*	304
Industry	304
Salineno*	304
Darrouzett	303
Gary City	303
Alma	302
Nesbitt	302
Tynan*	301
Abbott	300
Hilltop*	300
Lueders	300
Huxley	298
Grays Prairie	296
Woodson	296
Westdale*	295
Tuleta*	292
Richland	291
Falman-County Acres*	289

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Midway	288
Doyle*	285
Las Colonias*	283
Annona	282
Covington	282
Malone	278
Cross Timber	277
Latexo	272
San Isidro*	270
Pernitas Point	269
Las Lomitas*	267
Study Butte-Terlingua*	267
Chester	265
Roaring Springs	265
Benjamin	264
Goodlow	264
El Indio*	263
North Cleveland	263
Scottsville	263
Fayetteville	261
Del Mar Heights*	259
Anderson	257
Sanctuary	256
El Camino Angosto*	254
Goldsmith	253
Laguna Seca*	251
Megargel	248
Tira	248
Woodloch	247
Lago*	246
Mingus	246
Ackerly	245
Windom	245
Goodrich	243
Quemado*	243
Utopia*	241
Caney City	236
Thompsons	236
Wixon Valley	235
Progreso Lakes	234
Hays	233
Moran	233
Oakhurst	230
Carmine	228
Ross	228
Forsan	226
Bynum	225
Carbon	224

City or CDP*	Population
Oak Ridge (Cooke County)	224
El Refugio*	221
Marquez	220
Browndell	219
Ratamosa*	218
Cantu Addition*	217
Ravenna	215
Loma Linda East*	214
Pecan Gap	214
Bailey	213
Creedmoor	211
Penelope	211
Bishop Hills	210
Barry	209
Realitos*	209
Westlake	207
Grand Acres*	203
Rangerville	203
Sanford	203
Streetman	203
Wellman	203
Westbrook	203
Pawnee*	201
La Ward	200
Prado Verde*	200
Mobile City	196
Coffee City	193
Austwell	192
Navarro	191
Broaddus	189
Jolly	188
Opdyke West	188
Valentine	187
Moore Station	184
New Falcon*	184
Edgewater-Paisano*	182
Cottonwood	181
Leona	181
Encino*	177
Weinert	177
Douglassville	175
Mullin	175
Lyford South*	172
Morse*	172
Estelline	168
La Feria North*	168
Lake View*	167
Tradewinds*	163

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Cool	162
Radar Base*	162
Tierra Bonita*	160
Adrian	159
Emhouse	159
Melvin	155
Lakeview	152
Uncertain	150
Mertens	146
Todd Mission	146
Cuney	145
Novice	142
Lopeno*	140
Coyanosa*	138
Aquilla	136
Catarina*	135
Lasana*	135
Springlake	135
Carl's Corner	134
Flowella*	134
Ranchette Estates*	133
Airport Road Addition*	132
Botines*	132
O'Brien	132
Redford*	132
Villa del Sol*	132
Pyote	131
Seven Oaks	131
Edmonson	123
Kirvin	122
Normanna*	121
Miller's Cove	120
Dodson	115
Bausell and Ellis*	112
Marietta	112
Round Mountain	111
Dorchester	109
Millican	108
Mobeetie	107
Powell	105
Relampago*	104
Yznaga*	103
Dayton Lakes	101
Spade*	100
Toyah	100
Morales-Sanchez*	95
Rocky Mound	93
Corral City	89
Toco	89
Putnam	88
Zapata Ranch*	88
Los Angeles Subdivision*	86
Petronila	83
Falcon Village*	78
Santa Monica*	78
Round Top	77
Box Canyon-Amistad*	76
Spofford	75
Fowlerton*	62
Girard*	62
Butterfield*	61
Concepcion*	61
Elbert*	56
Neylandville	56
Domino	52
Sun Valley	51
Mustang	47
South Fork Estates*	47
Lipscomb*	44
Reese Center*	42
Impact	39
Samnorwood*	39
Quintana	38
Cuevitas*	37
Quail*	33
Los Ybanez	32
Brundage*	31
Tulsita*	20
Willamar*	15
Guerra*	8

*Unincorporated area that is a Census Designated Place (CDP).

Appendix 2

2000 Texas Census County Summary

According to the official returns of the 22nd Decennial Census of the United States, as released by the Bureau of the Census on March 12, 2001.

(Ranked by population)

Texas Legislative Council
August 2001

Population in Texas Counties
2000 Unadjusted Census Data

County	Population
Harris	3,400,578
Dallas	2,218,899
Tarrant	1,446,219
Bexar	1,392,931
Travis	812,280
El Paso	679,622
Hidalgo	569,463
Collin	491,675
Denton	432,976
Fort Bend	354,452
Cameron	335,227
Nueces	313,645
Montgomery	293,768
Jefferson	252,051
Galveston	250,158
Williamson	249,967
Lubbock	242,628
Brazoria	241,767
Bell	237,974
McLennan	213,517
Webb	193,117
Smith	174,706
Brazos	152,415
Wichita	131,664
Johnson	126,811
Taylor	126,555
Ector	121,123
Midland	116,009
Potter	113,546
Gregg	111,379
Ellis	111,360
Grayson	110,595
Randall	104,312
Tom Green	104,010
Hays	97,589
Bowie	89,306
Guadalupe	89,023
Parker	88,495
Orange	84,966
Victoria	84,088
Angelina	80,130
Comal	78,021
Hunt	76,596

County	Population
Coryell	74,978
Henderson	73,277
Kaufman	71,313
Liberty	70,154
San Patricio	67,138
Harrison	62,110
Walker	61,758
Nacogdoches	59,203
Bastrop	57,733
Anderson	55,109
Starr	53,597
Wise	48,793
Lamar	48,499
Van Zandt	48,140
Hardin	48,073
Rusk	47,372
Maverick	47,297
Cherokee	46,659
Navarro	45,124
Val Verde	44,856
Kerr	43,653
Rockwall	43,080
Wharton	41,188
Polk	41,133
Hood	41,100
Jim Wells	39,326
Medina	39,304
Atascosa	38,628
Matagorda	37,957
Brown	37,674
Wood	36,752
Hale	36,602
Cooke	36,363
Jasper	35,604
Upshur	35,291
Burnet	34,147
Howard	33,627
Erath	33,001
Waller	32,663
Wilson	32,408
Bee	32,359
Hill	32,321
Caldwell	32,194

County	Population
Hopkins	31,960
Kleberg	31,549
Fannin	31,242
Cass	30,438
Washington	30,373
Titus	28,118
Palo Pinto	27,026
Chambers	26,031
Uvalde	25,926
Shelby	25,224
Milam	24,238
Hutchinson	23,857
Kendall	23,743
Austin	23,590
Grimes	23,552
Houston	23,185
Panola	22,756
Gray	22,744
Hockley	22,716
Aransas	22,497
San Jacinto	22,246
Limestone	22,051
Fayette	21,804
Tyler	20,871
Gillespie	20,814
Jones	20,785
Calhoun	20,647
Colorado	20,390
Moore	20,121
Willacy	20,082
DeWitt	20,013
Lavaca	19,210
Montague	19,117
Gonzales	18,628
Falls	18,576
Deaf Smith	18,561
Eastland	18,297
Young	17,943
Freestone	17,867
Lampasas	17,762
Bandera	17,645
Bosque	17,204
Llano	17,044
Pecos	16,809
Burleson	16,470
Scurry	16,361
Frio	16,252
Robertson	16,000

County	Population
Nolan	15,802
Lee	15,657
Karnes	15,446
Leon	15,335
Newton	15,072
Dawson	14,985
Lamb	14,709
Wilbarger	14,676
Gaines	14,467
Jackson	14,391
Red River	14,314
Comanche	14,026
Trinity	13,779
Reeves	13,137
Duval	13,120
Morris	13,048
Andrews	13,004
Madison	12,940
Callahan	12,905
Terry	12,761
Live Oak	12,309
Zapata	12,182
Zavala	11,600
Camp	11,549
Runnels	11,495
Clay	11,006
Marion	10,941
Ward	10,909
Sabine	10,469
Dimmit	10,248
Parmer	10,016
Mitchell	9,698
Stephens	9,674
Franklin	9,458
Coleman	9,235
Rains	9,139
Ochiltree	9,006
San Augustine	8,946
Brewster	8,866
Archer	8,854
Jack	8,763
Blanco	8,418
Swisher	8,378
Castro	8,285
Hamilton	8,229
McCulloch	8,205
Brooks	7,976
Refugio	7,828

County	Population
Floyd	7,771
Childress	7,688
Yoakum	7,322
Presidio	7,304
Winkler	7,173
Crosby	7,072
Goliad	6,928
Somervell	6,809
Bailey	6,594
Lynn	6,550
Carson	6,516
Dallam	6,222
San Saba	6,186
Haskell	6,093
La Salle	5,866
Hartley	5,537
Hansford	5,369
Delta	5,327
Wheeler	5,284
Jim Hogg	5,281
Mills	5,151
Garza	4,872
Martin	4,746
Hardeman	4,724
Kimble	4,468
Fisher	4,344
Knox	4,253
Crockett	4,099
Baylor	4,093
Sutton	4,077
Crane	3,996
Concho	3,966
Coke	3,864
Donley	3,828
Hall	3,782
Mason	3,738

County	Population
Cochran	3,730
Upton	3,404
Kinney	3,379
Hemphill	3,351
Hudspeth	3,344
Reagan	3,326
Shackelford	3,302
Collingsworth	3,206
Sherman	3,186
Lipscomb	3,057
Real	3,047
Culberson	2,975
Schleicher	2,935
Dickens	2,762
Menard	2,360
Jeff Davis	2,207
Oldham	2,185
Edwards	2,162
Armstrong	2,148
Cottle	1,904
Throckmorton	1,850
Briscoe	1,790
Irion	1,771
Stonewall	1,693
Foard	1,622
Motley	1,426
Glasscock	1,406
Sterling	1,393
Terrell	1,081
Roberts	887
Kent	859
McMullen	851
Borden	729
Kenedy	414
King	356
Loving	67

TOTAL POPULATION 20,851,820

Appendix 3

2000 Texas Census City Summary

According to the official returns of the 22nd Decennial Census of the United States, as released by the Bureau of the Census on March 12, 2001.

(Alphabetical)

Texas Legislative Council
August 2001

Population in Texas Cities and CDPs
2000 Unadjusted Census Data

City or CDP*	Population
Abbott	300
Abernathy	2,839
Abilene	115,930
Abram-Perezville*	5,444
Ackerly	245
Addison	14,166
Adrian	159
Agua Dulce* (El Paso County)	738
Agua Dulce (Nueces County)	737
Airport Road Addition*	132
Alamo	14,760
Alamo Heights	7,319
Alba	430
Albany	1,921
Aldine*	13,979
Aledo	1,726
Alfred-South La Paloma*	451
Alice	19,010
Alice Acres*	491
Allen	43,554
Alma	302
Alpine	5,786
Alto	1,190
Alto Bonito*	569
Alton	4,384
Alton North*	5,051
Alvarado	3,288
Alvin	21,413
Alvord	1,007
Amarillo	173,627
Ames	1,079
Amherst	791
Anahuac	2,210
Anderson	257
Anderson Mill*	8,953
Andrews	9,652
Angleton	18,130
Angus	334
Anna	1,225
Annetta	1,108
Annetta North	467
Annetta South	555
Annona	282
Anson	2,556
Anthony	3,850
Anton	1,200
Appleby	444
Aquilla	136
Aransas Pass	8,138
Archer City	1,848
Arcola	1,048
Argyle	2,365
Arlington	332,969
Arp	901
Arroyo Alto*	320
Arroyo Colorado Estates*	755
Arroyo Gardens-La Tina Ranch*	732
Asherton	1,342
Aspermont	1,021
Atascocita*	35,757
Athens	11,297
Atlanta	5,745
Aubrey	1,500
Aurora	853
Austin	656,562
Austwell	192
Avery	462
Avinger	464
Azle	9,600
Bacliff*	6,962
Bailey	213
Bailey's Prairie	694
Baird	1,623
Balch Springs	19,375
Balcones Heights	3,016
Ballinger	4,243
Balmorhea	527
Bandera	957
Bangs	1,620
Bardwell	583
Barrett*	2,872
Barry	209
Barstow	406
Bartlett	1,675
Barton Creek*	1,589
Bartonville	1,093

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Bastrop	5,340
Batesville*	1,298
Bausell and Ellis*	112
Baytown	66,430
Bay City	18,667
Bayou Vista	1,644
Bayside	360
Bayview	323
Beach City	1,645
Bear Creek	360
Beasley	590
Beaumont	113,866
Beckville	752
Bedford	47,152
Bee Cave	656
Beeville	13,129
Bellaire	15,642
Bellevue	386
Bellmead	9,214
Bells	1,190
Bellville	3,794
Belton	14,623
Benavides	1,686
Benbrook	20,208
Benjamin	264
Berryville	891
Bertram	1,122
Beverly Hills	2,113
Bevil Oaks	1,346
Big Lake	2,885
Big Sandy	1,288
Big Spring	25,233
Big Wells	704
Bigfoot*	304
Bishop	3,305
Bishop Hills	210
Bixby*	356
Blackwell	360
Blanco	1,505
Blanket	402
Blessing*	861
Bloomburg	375
Blooming Grove	833
Bloomington*	2,562
Blossom	1,439
Blue Berry Hill*	982
Blue Mound	2,388
Blue Ridge	672

City or CDP*	Population
Bluetown-Iglesia Antigua*	692
Blum	399
Boerne	6,178
Bogata	1,396
Boling-Iago*	1,271
Bolivar Peninsula*	3,853
Bonham	9,990
Bonney	384
Booker	1,315
Borger	14,302
Botines*	132
Bovina	1,874
Bowie	5,219
Box Canyon-Amistad*	76
Boyd	1,099
Brackettville	1,876
Brady	5,523
Brazoria	2,787
Breckenridge	5,868
Bremond	876
Brenham	13,507
Briar*	5,350
Briarcliff	895
Briaroaks	493
Bridge City	8,651
Bridgeport	4,309
Broaddus	189
Bronte	1,076
Brookshire	3,450
Brookside Village	1,960
Browndell	219
Brownfield	9,488
Brownsboro	796
Brownsville	139,722
Brownwood	18,813
Bruceville-Eddy	1,490
Brundage*	31
Bruni*	412
Brushy Creek*	15,371
Bryan	65,660
Bryson	528
Buchanan Dam*	1,688
Buckholts	387
Buda	2,404
Buffalo	1,804
Buffalo Gap	463
Buffalo Springs	493
Bullard	1,150

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Bulverde	3,761
Buna*	2,269
Bunker Hill Village	3,654
Burkburnett	10,927
Burke	315
Burleson	20,976
Burnet	4,735
Burton	359
Butterfield*	61
Byers	517
Bynum	225
Cactus	2,538
Caddo Mills	1,149
Caldwell	3,449
Callisburg	365
Calvert	1,426
Cameron	5,634
Cameron Park*	5,961
Camp Swift*	4,731
Camp Wood	822
Campbell	734
Canadian	2,233
Caney City	236
Canton	3,292
Cantu Addition*	217
Canutillo*	5,129
Canyon	12,875
Canyon Lake*	16,870
Carbon	224
Carl's Corner	134
Carmine	228
Carrizo Hill*	548
Carrizo Springs	5,655
Carrollton	109,576
Carthage	6,664
Castle Hills	4,202
Castroville	2,664
Catarina*	135
Cedar Hill	32,093
Cedar Park	26,049
Celeste	817
Celina	1,861
Center	5,678
Centerville	903
Central Gardens*	4,106
Cesar Chavez*	1,469
Chandler	2,099
Channelview*	29,685
Channing	356
Charlotte	1,637
Chester	265
Chico	947
Childress	6,778
Chillicothe	798
China	1,112
China Grove	1,247
Chireno	405
Christine	436
Christoval*	422
Chula Vista-Orason*	394
Chula Vista-River Spur*	400
Cibolo	3,035
Cienegas Terrace*	2,878
Cinco Ranch*	11,196
Circle D-KC Estates*	2,010
Cisco	3,851
Citrus City*	941
Clarendon	1,974
Clarksville City	806
Clarksville	3,883
Claude	1,313
Clear Lake Shores	1,205
Cleburne	26,005
Cleveland	7,605
Clifton	3,542
Clint	980
Cloverleaf*	23,508
Clute	10,424
Clyde	3,345
Coahoma	932
Cockrell Hill	4,443
Coffee City	193
Coldspring	691
Coleman	5,127
College Station	67,890
Colleyville	19,636
Collinsville	1,235
Colmesneil	638
Colorado	4,281
Columbus	3,916
Comanche	4,482
Combes	2,553
Combine	1,788
Comfort*	2,358
Commerce	7,669
Como	621

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Concepcion*	61
Conroe	36,811
Converse	11,508
Cool	162
Coolidge	848
Cooper	2,150
Coppell	35,958
Copper Canyon	1,216
Copperas Cove	29,592
Corinth	11,325
Corpus Christi	277,454
Corral	89
Corrigan	1,721
Corsicana	24,485
Cottonwood	181
Cottonwood Shores	877
Cotulla	3,614
Cove	323
Covington	282
Coyanosa*	138
Coyote Acres*	389
Crandall	2,774
Crane	3,191
Cranfills Gap	335
Crawford	705
Creedmoor	211
Crockett	7,141
Crosby*	1,714
Crosbyton	1,874
Cross Mountain*	1,524
Cross Plains	1,068
Cross Roads	603
Cross Timber	277
Crowell	1,141
Crowley	7,467
Crystal City	7,190
Cuero	6,571
Cuevitas*	37
Cumby	616
Cumings*	683
Cuney	145
Cushing	637
Cut and Shoot	1,158
Daingerfield	2,517
Daisetta	1,034
Dalhart	7,237
Dallas	1,188,580
Dalworthington Gardens	2,186
Damon*	535
Danbury	1,611
Darrouzett	303
Dawson	852
Dayton	5,709
Dayton Lakes	101
De Kalb	1,769
De Leon	2,433
Dean	341
Decatur	5,201
Deer Park	28,520
Del Mar Heights*	259
Del Rio	33,867
Del Sol-Loma Linda*	726
Dell City	413
Denison	22,773
Denton	80,537
Denver	3,985
Deport	718
DeSoto	37,646
Detroit	776
Devers	416
Devine	4,140
Deweyville*	1,190
Diboll	5,470
Dickens	332
Dickinson	17,093
Dilley	3,674
Dimmitt	4,375
Dodd City	419
Dodson	115
Doffing*	4,256
Domino	52
Donna	14,768
Doolittle*	2,358
Dorchester	109
Double Oak	2,179
Douglassville	175
Doyle*	285
Dripping Springs	1,548
Driscoll	825
Dublin	3,754
Dumas	13,747
Duncanville	36,081
Eagle Lake	3,664
Eagle Mountain*	6,599
Eagle Pass	22,413
Early	2,588

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Earth	1,109
East Bernard*	1,729
East Mountain	580
East Tawakoni	775
Eastland	3,769
Easton	524
Ector	600
Edcouch	3,342
Eden	2,561
Edgecliff Village	2,550
Edgewater-Paisano*	182
Edgewood	1,348
Edinburg	48,465
Edmonson	123
Edna	5,899
Edom	322
Edroy*	420
Eidson Road*	9,348
El Camino Angosto*	254
El Campo	10,945
El Cenizo	3,545
El Indio*	263
El Lago	3,075
El Paso	563,662
El Refugio*	221
Elbert*	56
Eldorado	1,951
Electra	3,168
Elgin	5,700
Elkhart	1,215
Elm Creek*	1,928
Elmendorf	664
Elsa	5,549
Emhouse	159
Emory	1,021
Encantada-Ranchito El Calaboz*	2,100
Enchanted Oaks	357
Encinal	629
Encino*	177
Ennis	16,045
Escobares*	1,954
Estelline	168
Euless	46,005
Eureka	340
Eustace	798
Evadale*	1,430
Evant	393
Everman	5,836

City or CDP*	Population
Fabens*	8,043
Fair Oaks Ranch	4,695
Fairchilds	678
Fairfield	3,094
Fairview	2,644
Falcon Heights*	335
Falcon Lake Estates*	830
Falcon Mesa*	506
Falcon Village*	78
Falfurrias	5,297
Falls City	591
Falman-County Acres*	289
Farmers Branch	27,508
Farmersville	3,118
Farwell	1,364
Fate	497
Fayetteville	261
Faysville*	348
Ferris	2,175
Fifth Street*	2,059
Flatonia	1,377
Florence	1,054
Floresville	5,868
Flowella*	134
Flower Mound	50,702
Floydada	3,676
Follett	412
Forest Hill	12,949
Forney	5,588
Forsan	226
Fort Bliss*	8,264
Fort Davis*	1,050
Fort Hancock*	1,713
Fort Hood*	33,711
Fort Stockton	7,846
Fort Worth	534,694
Four Corners*	2,954
Fowlerton*	62
Franklin	1,470
Frankston	1,209
Fredericksburg	8,911
Freeport	12,708
Freer	3,241
Fresno*	6,603
Friendswood	29,037
Friona	3,854
Frisco	33,714
Fritch	2,235

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Fronton*	599
Frost	648
Fruitvale	418
Fulshear	716
Fulton	1,553
Gainesville	15,538
Galena Park	10,592
Gallatin	378
Galveston	57,247
Ganado	1,915
Garceno*	1,438
Garden Ridge	1,882
Gardendale*	1,197
Garfield*	1,660
Garland	215,768
Garrett	448
Garrison	844
Gary City	303
Gatesville	15,591
Georgetown	28,339
George West	2,524
Geronimo*	619
Gholson	922
Giddings	5,105
Gilmer	4,799
Girard*	62
Gladewater	6,078
Glen Rose	2,122
Glenn Heights	7,224
Godley	879
Goldsmith	253
Goldthwaite	1,802
Goliad	1,975
Golinda	423
Gonzales	7,202
Goodlow	264
Goodrich	243
Gordon	451
Goree	321
Gorman	1,236
Graford	578
Graham	8,716
Granbury	5,718
Grand Acres*	203
Grand Prairie	127,427
Grand Saline	3,028
Grandfalls	391
Grandview	1,358
Granger	1,299
Granite Shoals	2,040
Granjeno	313
Grape Creek*	3,138
Grapeland	1,451
Grapevine	42,059
Grays Prairie	296
Greatwood*	6,640
Green Valley Farms*	720
Greenville	23,960
Gregory	2,318
Grey Forest	418
Groesbeck	4,291
Groom	587
Groves	15,733
Groveton	1,107
Gruver	1,162
Guerra*	8
Gun Barrel City	5,145
Gunter	1,230
Gustine	457
Hackberry	544
Hale Center	2,263
Hallettsville	2,345
Hallsburg	518
Hallsville	2,772
Haltom City	39,018
Hamilton	2,977
Hamlin	2,248
Happy	647
Hardin	755
Harker Heights	17,308
Harlingen	57,564
Harper*	1,006
Hart	1,198
Hartley*	441
Haskell	3,106
Haslet	1,134
Havana*	452
Hawk Cove	457
Hawkins	1,331
Hawley	646
Hays	233
Hearne	4,690
Heath	4,149
Hebbronville*	4,498
Hebron	874
Hedley	379

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Hedwig Village	2,334
Heidelberg*	1,586
Helotes	4,285
Hemphill	1,106
Hempstead	4,691
Henderson	11,273
Henrietta	3,264
Hereford	14,597
Hermleigh*	393
Hewitt	11,085
Hickory Creek	2,078
Hico	1,341
Hidalgo	7,322
Higgins	425
Highland Haven	450
Highland Park	8,842
Highland Village	12,173
Highlands*	7,089
Hill Country Village	1,028
Hillcrest	722
Hillsboro	8,232
Hilltop*	300
Hilshire Village	720
Hitchcock	6,386
Holiday Lakes	1,095
Holland	1,102
Holliday	1,632
Hollywood Park	2,983
Homestead Meadows North*	4,232
Homestead Meadows South*	6,807
Hondo	7,897
Honey Grove	1,746
Hooks	2,973
Horizon City	5,233
Horseshoe Bay*	3,337
Houston	1,953,631
Howardwick	437
Howe	2,478
Hubbard	1,586
Hudson	3,792
Hudson Bend*	2,369
Hudson Oaks	1,637
Hughes Springs	1,856
Humble	14,579
Hungerford*	645
Hunters Creek Village*	4,374
Huntington	2,068
Huntsville	35,078
Hurst	36,273
Hutchins	2,805
Hutto	1,250
Huxley	298
Idalou	2,157
Impact	39
Imperial*	428
Indian Hills*	2,036
Indian Lake	541
Industry	304
Inez*	1,787
Ingleside	9,388
Ingleside on the Bay	659
Ingram	1,740
Iowa Colony	804
Iowa Park	6,431
Iraan	1,238
Iredell	360
Irving	191,615
Italy	1,993
Itasca	1,503
Jacinto City	10,302
Jacksboro	4,533
Jacksonville	13,868
Jamaica Beach	1,075
Jasper	8,247
Jayton	513
Jefferson	2,024
Jersey Village	6,880
Jewett	861
Joaquin	925
Johnson City	1,191
Jolly	188
Jollyville*	15,813
Jonestown	1,681
Jones Creek	2,130
Josephine	594
Joshua	4,528
Jourdanton	3,732
Junction	2,618
Justin	1,891
Karnes City	3,457
Katy	11,775
Kaufman	6,490
K-Bar Ranch*	350
Keene	5,003
Keller	27,345
Kemah	2,330

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Kemp	1,133
Kempner	1,004
Kendleton	466
Kenedy	3,487
Kenefick	667
Kennard	317
Kennedale	5,850
Kerens	1,681
Kermit	5,714
Kerrville	20,425
Kilgore	11,301
Killeen	86,911
Kingsbury*	652
Kingsland*	4,584
Kingsville	25,575
Kirby	8,673
Kirbyville	2,085
Kirvin	122
Knippa*	739
Knollwood	375
Knox City	1,219
Kosse	497
Kountze	2,115
Kress	826
Krugerville	903
Krum	1,979
Kyle	5,314
La Blanca*	2,351
La Casita-Garciasville*	2,177
La Feria	6,115
La Feria North*	168
La Grange	4,478
La Grulla	1,211
La Homa*	10,433
La Joya	3,303
La Marque	13,682
La Paloma*	354
La Paloma-Lost Creek*	323
La Porte	31,880
La Presa*	508
La Pryor*	1,491
La Puerta*	1,636
La Rosita*	1,729
La Vernia	931
La Victoria*	1,683
La Villa	1,305
La Ward	200
Lackland AFB*	7,123
LaCoste	1,255
Lacy-Lakeview	5,764
Ladonia	667
Lago*	246
Lago Vista	4,507
Laguna Heights*	1,990
Laguna Seca*	251
Laguna Vista	1,658
Lake City	526
Lake Bridgeport	372
Lake Brownwood*	1,694
Lake Dallas	6,166
Lake Jackson	26,386
Lake Kiowa*	1,883
Lake Tanglewood	825
Lake View*	167
Lake Worth	4,618
Lakehills*	4,668
Lakeport	861
Lakeshore Gardens-Hidden Acres*	720
Lakeside (San Patricio County)	333
Lakeside (Tarrant County)	1,040
Lakeside City	984
Lakeview	152
Lakeway	8,002
Lakewood Village	342
Lamesa	9,952
Lampasas	6,786
Lancaster	25,894
Laredo	176,576
Laredo Ranchettes*	1,845
Larga Vista*	742
Las Colonias*	283
Las Lomas*	2,684
Las Lomitas*	267
Las Palmas-Juarez*	1,666
Las Quintas Fronterizas*	2,030
Lasana*	135
Lasara*	1,024
Latexo	272
Laughlin AFB*	2,225
Laureles*	3,285
Lavon	387
Lawn	353
League City	45,444
Leakey	387
Leander	7,596
Leary	555

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Lefors	559
Leon Valley	9,239
Leona	181
Leonard	1,846
Leroy	335
Levelland	12,866
Lewisville	77,737
Lexington	1,178
Liberty	8,033
Liberty City*	1,935
Liberty Hill	1,409
Lincoln Park	517
Lindale	2,954
Linden	2,256
Lindsay (Cooke County)	788
Lindsay* (Reeves County)	394
Lipan	425
Lipscomb*	44
Little Elm	3,646
Little River-Academy	1,645
Littlefield	6,507
Live Oak	9,156
Liverpool	404
Livingston	5,433
Llano	3,325
Llano Grande*	3,333
Lockhart	11,615
Lockney	2,056
Log Cabin	733
Lolita*	548
Loma Linda East*	214
Lometa	782
Lone Oak	521
Lone Star	1,631
Longview	73,344
Lopeno*	140
Lopezville*	4,476
Loraine	656
Lorena	1,433
Lorenzo	1,372
Los Alvarez*	1,434
Los Angeles Subdivision*	86
Los Ebanos*	403
Los Fresnos	4,512
Los Indios	1,149
Los Villareales*	930
Los Ybanez	32
Lost Creek*	4,729
Lott	724
Louise*	977
Lovelady	608
Lowry Crossing	1,229
Lozano*	324
Lubbock	199,564
Lucas	2,890
Lueders	300
Lufkin	32,709
Luling	5,080
Lumberton	8,731
Lyford	1,973
Lyford South*	172
Lytle	2,383
Mabank	2,151
Madisonville	4,159
Magnolia	1,111
Malakoff	2,257
Malone	278
Manor	1,204
Mansfield	28,031
Manvel	3,046
Marathon*	455
Marble Falls	4,959
Marfa	2,121
Marietta	112
Marion	1,099
Markham*	1,138
Marlin	6,628
Marquez	220
Marshall	23,935
Marshall Creek	431
Mart	2,273
Martindale	953
Mason	2,134
Matador	740
Mathis	5,034
Maud	1,028
Mauriceville*	2,743
Maypearl	746
McAllen	106,414
McCamey	1,805
McGregor	4,727
McKinney	54,369
McLean	830
McLendon-Chisholm	914
McQueeney*	2,527
Meadow	658

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Meadowlakes	1,293
Meadows Place	4,912
Medina*	2,960
Megargel	248
Melissa	1,350
Melvin	155
Memphis	2,479
Menard	1,653
Mercedes	13,649
Meridian	1,491
Merkel	2,637
Mertens	146
Mertzon	839
Mesquite	124,523
Mexia	6,563
Miami	588
Midland	94,996
Midlothian	7,480
Midway	288
Midway North*	3,946
Midway South*	1,711
Mila Doce*	4,907
Milam*	1,329
Milano	400
Mildred	405
Miles	850
Milford	685
Miller's Cove	120
Millican	108
Millsap	353
Mineola	4,550
Mineral Wells	16,946
Mingus	246
Mirando City*	493
Mission	45,408
Mission Bend*	30,831
Missouri City	52,913
Mobeetie	107
Mobile City	196
Monahans	6,821
Mont Belvieu	2,324
Monte Alto*	1,611
Montgomery	489
Moody	1,400
Moore*	644
Moore Station	184
Morales-Sanchez*	95
Moran	233
Morgan	485
Morgan Farm Area*	484
Morgan's Point	336
Morgan's Point Resort	2,989
Morning Glory*	627
Morse*	172
Morton	2,249
Moulton	944
Mount Calm	310
Mount Enterprise	525
Mount Pleasant	13,935
Mount Vernon	2,286
Mountain City	671
Muenster	1,556
Muleshoe	4,530
Mullin	175
Munday	1,527
Muniz*	1,106
Murchison	592
Murphy	3,099
Mustang	47
Mustang Ridge	785
Nacogdoches	29,914
Naples	1,410
Nash	2,169
Nassau Bay	4,170
Natalia	1,663
Navarro	191
Navasota	6,789
Nazareth	356
Nederland	17,422
Needville	2,609
Nesbitt	302
Nevada	563
New Berlin	467
New Boston	4,808
New Braunfels	36,494
New Chapel Hill	553
New Deal	708
New Fairview	877
New Falcon*	184
New Home	320
New Hope	662
New London	987
New Summerfield	998
New Territory*	13,861
New Waverly	950
Newark	887

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Newcastle	575
Newton	2,459
Neylandville	56
Niederwald	584
Nixon	2,186
Nocona	3,198
Nolanville	2,150
Nome	515
Noonday	515
Nordheim	323
Normangee	719
Normanna*	121
North Alamo*	2,061
North Cleveland	263
North Escobares*	1,692
North Pearsall*	561
North Richland Hills	55,635
North San Pedro*	920
Northcliff*	1,819
Northlake	921
Novice	142
Nurillo*	5,056
Oak Grove	710
Oak Leaf	1,209
Oak Point	1,747
Oak Ridge (Cooke County)	224
Oak Ridge (Kaufman County)	400
Oak Ridge North	2,991
Oak Trail Shores*	2,475
Oak Valley	401
Oakhurst	230
Oakwood	471
O'Brien	132
Odem	2,499
Odessa	90,943
O'Donnell	1,011
Oglesby	458
Oilton*	310
Old River-Winfree	1,364
Olivarez*	2,445
Olmito*	1,198
Olmos Park	2,343
Olney	3,396
Olton	2,288
Omaha	999
Onalaska	1,174
Onion Creek*	2,116
Opdyke West	188

City or CDP*	Population
Orange	18,643
Orange Grove	1,288
Orchard	408
Ore City	1,106
Overton	2,350
Ovilla	3,405
Owl Ranch-Amargosa*	527
Oyster Creek	1,192
Ozona*	3,436
Paducah	1,498
Paint Rock	320
Palacios	5,153
Palestine	17,598
Palisades	352
Palm Valley	1,298
Palmer	1,774
Palmhurst	4,872
Palmview	4,107
Palmview South*	6,219
Pampa	17,887
Panhandle	2,589
Panorama Village	1,965
Pantego	2,318
Paradise	459
Paris	25,898
Parker	1,379
Pasadena	141,674
Pattison	447
Patton Village	1,391
Pawnee*	201
Payne Springs	683
Pearland	37,640
Pearsall	7,157
Pecan Acres*	2,289
Pecan Gap	214
Pecan Grove*	13,551
Pecan Hill	672
Pecan Plantation*	3,544
Pecos	9,501
Pelican Bay	1,505
Penelope	211
Penitas	1,167
Pernitas Point	269
Perryton	7,774
Petersburg	1,262
Petrolia	782
Petronila	83
Pettus*	608

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Pflugerville	16,335
Pharr	46,660
Pilot Point	3,538
Pine Forest	632
Pine Island	849
Pinehurst* (Montgomery County)	4,266
Pinehurst (Orange County)	2,274
Pineland	980
Pinewood Estates*	1,633
Piney Point Village	3,380
Pittsburg	4,347
Plains	1,450
Plainview	22,336
Plano	222,030
Pleak	947
Pleasant Valley	408
Pleasanton	8,266
Plum Grove	930
Point	792
Point Blank	559
Point Comfort	781
Ponder	507
Port Aransas	3,370
Port Arthur	57,755
Port Isabel	4,865
Port Lavaca	12,035
Port Mansfield*	415
Port Neches	13,601
Porter Heights*	1,490
Portland	14,827
Post	3,708
Post Oak Bend City	404
Poteet	3,305
Poth	1,850
Potosi*	1,664
Pottsboro	1,579
Powell	105
Poynor	314
Prado Verde*	200
Prairie View	4,410
Premont	2,772
Presidio	4,167
Primera	2,723
Princeton	3,477
Progreso	4,851
Progreso Lakes	234
Prosper	2,097
Putnam	88

City or CDP*	Population
Pyote	131
Quail*	33
Quanah	3,022
Queen City	1,613
Quemado*	243
Quinlan	1,370
Quintana	38
Quitaque	432
Quitman	2,030
Radar Base*	162
Ralls	2,252
Ranchette Estates*	133
Ranchitos Las Lomas*	334
Rancho Alegre*	1,775
Rancho Banquete*	469
Rancho Chico*	309
Rancho Viejo	1,754
Ranchos Penitas West*	520
Ranger	2,584
Rangerville	203
Rankin	800
Ransom Canyon	1,011
Ratamosa*	218
Ravenna	215
Raymondville	9,733
Realitos*	209
Red Lick	853
Red Oak	4,301
Redford*	132
Redwater	872
Redwood*	3,586
Reese Center*	42
Refugio	2,941
Reid Hope King*	802
Reklaw	327
Relampago*	104
Rendon*	9,022
Reno (Lamar County)	2,767
Reno (Parker County)	2,441
Retreat	339
Rhome	551
Rice	798
Richardson	91,802
Richland	291
Richland Hills	8,132
Richland Springs	350
Richmond	11,081
Richwood	3,012

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Riesel	973
Rio Bravo	5,553
Rio Grande City	11,923
Rio Hondo	1,942
Rio Vista	656
Rising Star	835
River Oaks	6,985
Riverside	425
Roanoke	2,810
Roaring Springs	265
Robert Lee	1,171
Robinson	7,845
Robstown	12,727
Roby	673
Rochester	378
Rockdale	5,439
Rockport	7,385
Rocksprings	1,285
Rockwall	17,976
Rocky Mound	93
Rogers	1,117
Rollingwood	1,403
Roma	9,617
Roma Creek*	610
Roman Forest	1,279
Ropesville	517
Roscoe	1,378
Rose City	519
Rose Hill Acres	480
Rosebud	1,493
Rosenberg	24,043
Rosita North*	3,400
Rosita South*	2,574
Ross	228
Rosser	379
Rotan	1,611
Round Mountain	111
Round Rock	61,136
Round Top	77
Rowlett	44,503
Roxton	694
Royse City	2,957
Rule	698
Runaway Bay	1,104
Runge	1,080
Rusk	5,085
Sabinal	1,586
Sachse	9,751

City or CDP*	Population
Sadler	404
Saginaw	12,374
Salado*	3,475
Salineno*	304
Samnorwood*	39
San Angelo	88,439
San Antonio	1,144,646
San Augustine	2,475
San Benito	23,444
San Carlos*	2,650
San Diego	4,753
San Elizario*	11,046
San Felipe	868
San Ignacio*	853
San Isidro*	270
San Juan	26,229
San Leanna	384
San Leon*	4,365
San Manuel-Linn*	958
San Marcos	34,733
San Patricio	318
San Pedro*	668
San Perlita	680
San Saba	2,637
Sanctuary	256
Sanderson*	861
Sandia*	431
Sandy Hollow-Escondidas*	433
Sanford	203
Sanger	4,534
Sansom Park	4,181
Santa Anna	1,081
Santa Clara	889
Santa Cruz*	630
Santa Fe	9,548
Santa Maria*	846
Santa Monica*	78
Santa Rosa	2,833
Savoy	850
Scenic Oaks*	3,279
Schertz	18,694
Schulenburg	2,699
Scissors*	2,805
Scotland	438
Scottsville	263
Seabrook	9,443
Seadrift	1,352
Seagoville	10,823

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Seagraves	2,334
Sealy	5,248
Sebastian*	1,864
Seguin	22,011
Selma	788
Seminole	5,910
Serenada*	1,847
Seth Ward*	1,926
Seven Oaks	131
Seven Points	1,145
Seymour	2,908
Shady Hollow*	5,140
Shady Shores	1,461
Shallowater	2,086
Shamrock	2,029
Shavano Park	1,754
Sheldon*	1,831
Shenandoah	1,503
Shepherd	2,029
Sherman	35,082
Shiner	2,070
Shoreacres	1,488
Sienna Plantation*	1,896
Sierra Blanca*	533
Siesta Shores*	890
Silsbee	6,393
Silverton	771
Simonton	718
Sinton	5,676
Skellytown	610
Skidmore*	1,013
Slaton	6,109
Smiley	453
Smithville	3,901
Smyer	480
Snook	568
Snyder	10,783
Socorro	27,152
Solis*	545
Somerset	1,550
Somerville	1,704
Sonora	2,924
Sour Lake	1,667
South Alamo*	3,101
South Fork Estates*	47
South Houston	15,833
South Mountain	412
South Padre Island	2,422
South Point*	1,118
South Toledo Bend*	576
Southlake	21,519
Southmayd	992
Southside Place	1,546
Spade*	100
Sparks*	2,974
Spearman	3,021
Splendora	1,275
Spofford	75
Springtown	2,062
Spring*	36,385
Spring Garden-Terra Verde*	693
Spring Valley	3,611
Springlake	135
Spur	1,088
St. Hedwig	1,875
St. Jo	977
St. Paul (Collin County)	630
St. Paul* (San Patricio County)	542
Stafford	15,681
Stagecoach	455
Stamford	3,636
Stanton	2,556
Star Harbor	416
Stephenville	14,921
Sterling City	1,081
Stinnett	1,936
Stockdale	1,398
Stonewall*	469
Stowell*	1,572
Stratford	1,991
Strawn	739
Streetman	203
Study Butte-Terlingua*	267
Sudan	1,039
Sugar Land	63,328
Sullivan City	3,998
Sulphur Springs	14,551
Sun Valley	51
Sundown	1,505
Sunnyvale	2,693
Sunray	1,950
Sunrise Beach Villa	704
Sunset	339
Sunset Valley	365
Surfside Beach	763
Sweeny	3,624

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Sweetwater	11,415
Taft	3,396
Taft Southwest*	1,721
Tahoka	2,910
Talco	570
Talty	1,028
Tatum	1,175
Taylor	13,575
Taylor Lake Village	3,694
Teague	4,557
Tehuacana	307
Temple	54,514
Tenaha	1,046
Terrell	13,606
Terrell Hills	5,019
Texarkana	34,782
Texas City	41,521
Texhoma	371
Texline	511
The Colony	26,531
The Hills	1,492
The Woodlands*	55,649
Thompsons	236
Thorndale	1,278
Thornton	525
Thorntonville	442
Thrall	710
Three Rivers	1,878
Throckmorton	905
Tierra Bonita*	160
Tierra Grande*	362
Tiki Island	1,016
Timbercreek Canyon	406
Timberwood Park*	5,889
Timpson	1,094
Tioga	754
Tira	248
Toco	89
Todd Mission	146
Tolar	504
Tom Bean	941
Tomball	9,089
Tool	2,275
Tornillo*	1,609
Toyah	100
Tradewinds*	163
Trent	318
Trenton	662
Trinidad	1,091
Trinity	2,721
Trophy Club	6,350
Troup	1,949
Troy	1,378
Tuleta*	292
Tulia	5,117
Tulsita*	20
Turkey	494
Tuscola	714
Tye	1,158
Tyler	83,650
Tynan*	301
Uhland	386
Uncertain	150
Union Grove	346
Universal City	14,849
University Park	23,324
Utopia*	241
Uvalde	14,929
Uvalde Estates*	1,972
Val Verde Park*	1,945
Valentine	187
Valley Mills	1,123
Valley View	737
Van	2,362
Van Alstyne	2,502
Van Horn	2,435
Van Vleck*	1,411
Vanderbilt*	411
Vega	936
Venus	910
Vernon	11,660
Victoria	60,603
Vidor	11,440
Villa del Sol*	132
Villa Pancho*	386
Villa Verde*	891
Vinton	1,892
Waco	113,726
Waelder	947
Wake Village	5,129
Waller	2,092
Wallis	1,172
Walnut Springs	755
Warren City	343
Waskom	2,068
Watauga	21,908

*Unincorporated area that is a Census Designated Place (CDP).

City or CDP*	Population
Waxahachie	21,426
Weatherford	19,000
Webster	9,083
Weimar	1,981
Weinert	177
Weir	591
Wellington	2,275
Wellman	203
Wells	769
Wells Branch*	11,271
Weslaco	26,935
West	2,692
West Columbia	4,255
West Lake Hills	3,116
West Livingston*	6,612
West Odessa*	17,799
West Orange	4,111
West Pearsall*	349
West Sharyland*	2,947
West Tawakoni	1,462
West University Place	14,211
Westbrook	203
Westdale*	295
Westlake	207
Westminster	390
Weston	635
Westover Hills	658
Westway*	3,829
Westworth Village	2,124
Wharton	9,237
Wheeler	1,378
White Deer	1,060
White Oak	5,624
White Settlement	14,831
Whiteface	465
Whitehouse	5,346
Whitesboro	3,760
Whitewright	1,740
Whitney	1,833
Wichita Falls	104,197
Wickett	455
Wild Peach Village*	2,498
Willamar*	15
Willis	3,985
Willow Park	2,849
Wills Point	3,496
Wilmer	3,393
Wilson	532
Wimberley*	3,797
Windcrest	5,105
Windemere*	6,868
Windom	245
Windthorst	440
Winfield	499
Wink	919
Winnie*	2,914
Winnsboro	3,584
Winona	582
Winters	2,880
Wixon Valley	235
Wolfe City	1,566
Wolfforth	2,554
Woodbranch	1,305
Woodcreek	1,274
Woodloch	247
Woodsboro	1,685
Woodson	296
Woodville	2,415
Woodway	8,733
Wortham	1,082
Wyldwood*	2,310
Wylie	15,132
Yantis	321
Yoakum	5,731
York	2,271
Yznaga*	103
Zapata*	4,856
Zapata Ranch*	88
Zavalla	647
Zuehl*	346

*Unincorporated area that is a Census Designated Place (CDP).

Appendix 4

2000 Texas Census County Summary

According to the official returns of the 22nd Decennial Census of the United States, as released by the Bureau of the Census on March 12, 2001.

(Alphabetical)

Texas Legislative Council
August 2001

Population in Texas Counties
2000 Unadjusted Census Data

County	Population
Anderson	55,109
Andrews	13,004
Angelina	80,130
Aransas	22,497
Archer	8,854
Armstrong	2,148
Atascosa	38,628
Austin	23,590
Bailey	6,594
Bandera	17,645
Bastrop	57,733
Baylor	4,093
Bee	32,359
Bell	237,974
Bexar	1,392,931
Blanco	8,418
Borden	729
Bosque	17,204
Bowie	89,306
Brazoria	241,767
Brazos	152,415
Brewster	8,866
Briscoe	1,790
Brooks	7,976
Brown	37,674
Burleson	16,470
Burnet	34,147
Caldwell	32,194
Calhoun	20,647
Callahan	12,905
Cameron	335,227
Camp	11,549
Carson	6,516
Cass	30,438
Castro	8,285
Chambers	26,031
Cherokee	46,659
Childress	7,688
Clay	11,006
Cochran	3,730
Coke	3,864
Coleman	9,235
Collin	491,675

County	Population
Collingsworth	3,206
Colorado	20,390
Comal	78,021
Comanche	14,026
Concho	3,966
Cooke	36,363
Coryell	74,978
Cottle	1,904
Crane	3,996
Crockett	4,099
Crosby	7,072
Culberson	2,975
Dallam	6,222
Dallas	2,218,899
Dawson	14,985
Deaf Smith	18,561
Delta	5,327
Denton	432,976
DeWitt	20,013
Dickens	2,762
Dimmit	10,248
Donley	3,828
Duval	13,120
Eastland	18,297
Ector	121,123
Edwards	2,162
Ellis	111,360
El Paso	679,622
Erath	33,001
Falls	18,576
Fannin	31,242
Fayette	21,804
Fisher	4,344
Floyd	7,771
Foard	1,622
Fort Bend	354,452
Franklin	9,458
Freestone	17,867
Frio	16,252
Gaines	14,467
Galveston	250,158
Garza	4,872
Gillespie	20,814

County	Population
Glasscock	1,406
Goliad	6,928
Gonzales	18,628
Gray	22,744
Grayson	110,595
Gregg	111,379
Grimes	23,552
Guadalupe	89,023
Hale	36,602
Hall	3,782
Hamilton	8,229
Hansford	5,369
Hardeman	4,724
Hardin	48,073
Harris	3,400,578
Harrison	62,110
Hartley	5,537
Haskell	6,093
Hays	97,589
Hemphill	3,351
Henderson	73,277
Hidalgo	569,463
Hill	32,321
Hockley	22,716
Hood	41,100
Hopkins	31,960
Houston	23,185
Howard	33,627
Hudspeth	3,344
Hunt	76,596
Hutchinson	23,857
Irion	1,771
Jack	8,763
Jackson	14,391
Jasper	35,604
Jeff Davis	2,207
Jefferson	252,051
Jim Hogg	5,281
Jim Wells	39,326
Johnson	126,811
Jones	20,785
Karnes	15,446
Kaufman	71,313
Kendall	23,743
Kenedy	414
Kent	859
Kerr	43,653
Kimble	4,468

County	Population
King	356
Kinney	3,379
Kleberg	31,549
Knox	4,253
Lamar	48,499
Lamb	14,709
Lampasas	17,762
La Salle	5,866
Lavaca	19,210
Lee	15,657
Leon	15,335
Liberty	70,154
Limestone	22,051
Lipscomb	3,057
Live Oak	12,309
Llano	17,044
Loving	67
Lubbock	242,628
Lynn	6,550
Madison	12,940
Marion	10,941
Martin	4,746
Mason	3,738
Matagorda	37,957
Maverick	47,297
McCulloch	8,205
McLennan	213,517
McMullen	851
Medina	39,304
Menard	2,360
Midland	116,009
Milam	24,238
Mills	5,151
Mitchell	9,698
Montague	19,117
Montgomery	293,768
Moore	20,121
Morris	13,048
Motley	1,426
Nacogdoches	59,203
Navarro	45,124
Newton	15,072
Nolan	15,802
Nueces	313,645
Ochiltree	9,006
Oldham	2,185
Orange	84,966
Palo Pinto	27,026

County	Population
Panola	22,756
Parker	88,495
Parmer	10,016
Pecos	16,809
Polk	41,133
Potter	113,546
Presidio	7,304
Rains	9,139
Randall	104,312
Reagan	3,326
Real	3,047
Red River	14,314
Reeves	13,137
Refugio	7,828
Roberts	887
Robertson	16,000
Rockwall	43,080
Runnels	11,495
Rusk	47,372
Sabine	10,469
San Augustine	8,946
San Jacinto	22,246
San Patricio	67,138
San Saba	6,186
Schleicher	2,935
Scurry	16,361
Shackelford	3,302
Shelby	25,224
Sherman	3,186
Smith	174,706
Somervell	6,809
Starr	53,597
Stephens	9,674
Sterling	1,393
Stonewall	1,693
Sutton	4,077

County	Population
Swisher	8,378
Tarrant	1,446,219
Taylor	126,555
Terrell	1,081
Terry	12,761
Throckmorton	1,850
Titus	28,118
Tom Green	104,010
Travis	812,280
Trinity	13,779
Tyler	20,871
Upshur	35,291
Upton	3,404
Uvalde	25,926
Val Verde	44,856
Van Zandt	48,140
Victoria	84,088
Walker	61,758
Waller	32,663
Ward	10,909
Washington	30,373
Webb	193,117
Wharton	41,188
Wheeler	5,284
Wichita	131,664
Wilbarger	14,676
Willacy	20,082
Williamson	249,967
Wilson	32,408
Winkler	7,173
Wise	48,793
Wood	36,752
Yoakum	7,322
Young	17,943
Zapata	12,182
Zavala	11,600

TOTAL POPULATION 20,851,820

Appendix 5

CODE CONSTRUCTION ACT

CHAPTER 311, GOVERNMENT CODE

Sec. 311.001. SHORT TITLE. This chapter may be cited as the Code Construction Act.

Sec. 311.002. APPLICATION. This chapter applies to:

(1) each code enacted by the 60th or a subsequent legislature as part of the state's continuing statutory revision program;

(2) each amendment, repeal, revision, and reenactment of a code or code provision by the 60th or a subsequent legislature;

(3) each repeal of a statute by a code; and

(4) each rule adopted under a code.

Sec. 311.003. RULES NOT EXCLUSIVE. The rules provided in this chapter are not exclusive but are meant to describe and clarify common situations in order to guide the preparation and construction of codes.

Sec. 311.004. CITATION OF CODES. A code may be cited by its name preceded by the specific part concerned. Examples of citations are:

(1) Title 1, Business & Commerce Code;

(2) Chapter 5, Business & Commerce Code;

(3) Section 9.304, Business & Commerce Code;

(4) Section 15.06(a), Business & Commerce Code; and

(5) Section 17.18(b)(1)(B)(ii), Business & Commerce Code.

Sec. 311.005. GENERAL DEFINITIONS. The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

(1) "Oath" includes affirmation.

(2) "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(3) "Population" means the population shown by the most recent federal decennial census.

(4) "Property" means real and personal property.

(5) "Rule" includes regulation.

(6) "Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing.

(7) "State," when referring to a part of the United States, includes any state, district, commonwealth, territory, and insular possession of the United States and any area subject to the legislative authority of the United States of America.

(8) "Swear" includes affirm.

(9) "United States" includes a department, bureau, or other agency of the United States of America.

(10) "Week" means seven consecutive days.

(11) "Written" includes any representation of words, letters, symbols, or figures.

(12) "Year" means 12 consecutive months.

(13) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

Sec. 311.006. INTERNAL REFERENCES. In a code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of the code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of the code in which the reference appears.

Sec. 311.011. COMMON AND TECHNICAL USAGE OF WORDS. (a) Words and phrases shall be read in context and construed according to the rules of grammar and common usage.

(b) Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Sec. 311.012. TENSE, NUMBER, AND GENDER. (a) Words in the present tense include the future tense.

(b) The singular includes the plural and the plural includes the singular.

(c) Words of one gender include the other genders.

Sec. 311.013. AUTHORITY AND QUORUM OF PUBLIC BODY. (a) A grant of authority to three or more persons as a public body confers the authority on a majority of the number of members fixed by statute.

(b) A quorum of a public body is a majority of the number of members fixed by statute.

Sec. 311.014. COMPUTATION OF TIME. (a) In computing a period of days, the first day is excluded and the last day is included.

(b) If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(c) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

Sec. 311.015. REFERENCE TO A SERIES. If a statute refers to a series of numbers or letters, the first and last numbers or letters are included.

Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute:

(1) "May" creates discretionary authority or grants permission or a power.

(2) "Shall" imposes a duty.

(3) "Must" creates or recognizes a condition precedent.

(4) "Is entitled to" creates or recognizes a right.

(5) "May not" imposes a prohibition and is synonymous with "shall not."

(6) "Is not entitled to" negates a right.

(7) "Is not required to" negates a duty or condition precedent.

Sec. 311.021. INTENTION IN ENACTMENT OF STATUTES. In enacting a statute, it is presumed that:

(1) compliance with the constitutions of this state and the United States is intended;

(2) the entire statute is intended to be effective;

(3) a just and reasonable result is intended;

(4) a result feasible of execution is intended; and

(5) public interest is favored over any private interest.

Sec. 311.022. PROSPECTIVE OPERATION OF STATUTES. A statute is presumed to be prospective in its operation unless expressly made retrospective.

Sec. 311.023. STATUTE CONSTRUCTION AIDS. In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

(1) object sought to be attained;

(2) circumstances under which the statute was enacted;

(3) legislative history;

(4) common law or former statutory provisions, including laws on the same or similar subjects;

(5) consequences of a particular construction;

(6) administrative construction of the statute; and

(7) title (caption), preamble, and emergency provision.

Sec. 311.024. HEADINGS. The heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute.

Sec. 311.025. IRRECONCILABLE STATUTES AND AMENDMENTS. (a) Except as provided by Section 311.031(d), if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(b) Except as provided by Section 311.031(d), if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

(c) In determining whether amendments are irreconcilable, text that is reenacted because of the requirement of Article III, Section 36, of the Texas Constitution is not considered to be irreconcilable with additions or omissions in the same text made by another amendment. Unless clearly indicated to the contrary, an amendment that reenacts text in compliance with that constitutional requirement does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment.

(d) In this section, the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.

(e) If the journals or other legislative records fail to disclose which of two or more bills in conflict is latest in date of enactment, the date of enactment of the respective bills is considered to be, in order of priority:

(1) the date on which the last presiding officer signed the bill;

(2) the date on which the governor signed the bill; or

(3) the date on which the bill became law by operation of law.

Sec. 311.026. SPECIAL OR LOCAL PROVISION PREVAILS OVER GENERAL. (a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.

(b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

Sec. 311.027. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.

Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A uniform act included in a code shall be construed to effect its general purpose to make uniform the law of those states that enact it.

Sec. 311.029. ENROLLED BILL CONTROLS. If the language of the enrolled bill version of a statute conflicts with the language of any subsequent printing or reprinting of the statute, the language of the enrolled bill version controls.

Sec. 311.030. REPEAL OF REPEALING STATUTE. The repeal of a repealing statute does not revive the statute originally repealed nor impair the effect of any saving provision in it.

Sec. 311.031. SAVING PROVISIONS. (a) Except as provided by Subsection (b), the reenactment, revision, amendment, or repeal of a statute does not affect:

(1) the prior operation of the statute or any prior action taken under it;

(2) any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it;

(3) any violation of the statute or any penalty, forfeiture, or punishment incurred under the statute before its amendment or repeal; or

(4) any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(b) If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.

(c) The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature that enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

(d) If any provision of a code conflicts with a statute enacted by the same legislature that enacted the code, the statute controls.

Sec. 311.032. SEVERABILITY OF STATUTES. (a) If any statute contains a provision for severability, that provision prevails in interpreting that statute.

(b) If any statute contains a provision for nonseverability, that provision prevails in interpreting that statute.

(c) In a statute that does not contain a provision for severability or nonseverability, if any provision of the statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute that can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.

Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY. In order to preserve the legislature's interest in managing state fiscal matters through the appropriations process, a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language. In a statute, the use of "person," as defined by Section 311.005 to include governmental entities, does not indicate legislative intent to waive sovereign immunity unless the context of the statute indicates no other reasonable construction. Statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity.

Appendix 6

CONSTRUCTION OF LAWS

CHAPTER 312, GOVERNMENT CODE

Sec. 312.001. APPLICATION. This subchapter applies to the construction of all civil statutes.

Sec. 312.002. MEANING OF WORDS. (a) Except as provided by Subsection (b), words shall be given their ordinary meaning.

(b) If a word is connected with and used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in the particular trade, subject matter, or art.

Sec. 312.003. TENSE, NUMBER, AND GENDER. (a) Words in the present or past tense include the future tense.

(b) The singular includes the plural and the plural includes the singular unless expressly provided otherwise.

(c) The masculine gender includes the feminine and neuter genders.

Sec. 312.004. GRANTS OF AUTHORITY. A joint authority given to any number of officers or other persons may be executed by a majority of them unless expressly provided otherwise.

Sec. 312.005. LEGISLATIVE INTENT. In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy.

Sec. 312.006. LIBERAL CONSTRUCTION. (a) The Revised Statutes are the law of this state and shall be liberally construed to achieve their purpose and to promote justice.

(b) The common law rule requiring strict construction of statutes in derogation of the common law does not apply to the Revised Statutes.

Sec. 312.007. REPEAL OF REPEALING STATUTE. The repeal of a repealing statute does not revive the statute originally repealed.

Sec. 312.008. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute, rule, or regulation applies to all reenactments, revisions, or amendments of the statute, rule, or regulation.

Sec. 312.011. DEFINITIONS. The following definitions apply unless a different meaning is apparent from the context of the statute in which the word appears:

(1) "Affidavit" means a statement in writing of a fact or facts signed by the party making it, sworn to before an officer authorized to administer oaths, and officially certified to by the officer under his seal of office.

(2) "Comptroller" means the state comptroller of public accounts.

(3) "Effects" includes all personal property and all interest in that property.

(4) "Governing body," if used with reference to a municipality, means the legislative body of a city, town, or village, without regard to the name or title given to any particular body.

(5) "Justice," when applied to a magistrate, means justice of the peace.

(6) "Land commissioner" means the Commissioner of the General Land Office.

(7) "Month" means a calendar month.

(8) "Oath" includes affirmation.

(9) "Official oath" means the oath required by Article XVI, Section 1, of the Texas Constitution.

(10) "Person" includes a corporation.

(11) "Preceding," when referring to a title, chapter, or article, means that which came immediately before.

(12) "Preceding federal census" or "most recent federal census" means the United States decennial census immediately preceding the action in question.

(13) "Property" includes real property, personal property, life insurance policies, and the effects of life insurance policies.

(14) "Signature" includes the mark of a person unable to write, and "subscribe" includes the making of such a mark.

(15) "Succeeding" means immediately following.

(16) "Swear" or "sworn" includes affirm or affirmed.

(17) "Written" or "in writing" includes any representation of words, letters, or figures, whether by writing, printing, or other means.

(18) "Year" means a calendar year.

(19) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

(20) "Population" means the population shown by the most recent federal decennial census.

Sec. 312.012. GRAMMAR AND PUNCTUATION. (a) A grammatical error does not vitiate a law. If the sentence or clause is meaningless because of the grammatical error, words and clauses may be transposed to give the law meaning.

(b) Punctuation of a law does not control or affect legislative intent in enacting the law.

Sec. 312.013. SEVERABILITY OF STATUTES. (a) Unless expressly provided otherwise, if any provision of a statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute that can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.

(b) This section does not affect the power or duty of a court to ascertain and give effect to legislative intent concerning severability of a statute.

Sec. 312.014. IRRECONCILABLE AMENDMENTS. (a) If statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(b) If amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

(c) In determining whether amendments to the same statute enacted at the same session of the legislature are irreconcilable, text that is reenacted because of the requirement of Article III, Section 36, of the Texas Constitution is not considered to be irreconcilable with additions or omissions in the same text made by another amendment. Unless clearly indicated to the contrary, an amendment that reenacts text in compliance with that constitutional requirement does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment.

(d) In this section, the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.

(e) If the journals or other legislative records fail to disclose which of two or more bills in conflict is latest in date of enactment, the date of enactment of the respective bills is considered to be, in order of priority:

(1) the date on which the last presiding officer signed the bill;

(2) the date on which the governor signed the bill; or

(3) the date on which the bill became law by operation of law.

Sec. 312.015. QUORUM. A majority of a board or commission established under law is a quorum unless otherwise specifically provided.

Sec. 312.016. STANDARD TIME. (a) The standard time in this state is the time at the 90th meridian longitude west from Greenwich, commonly known as “central standard time.”

(b) The standard time in a region of this state that used mountain standard time before June 12, 1947, is the time at the 105th meridian longitude west from Greenwich, commonly known as “mountain standard time.”

(c) Unless otherwise expressly provided, a reference in a statute, order, or rule to the time in which an act shall be performed means the appropriate standard time as provided by this section.

Appendix 7

TEXAS LEGISLATIVE COUNCIL

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DAVID DEWHURST
Lieutenant Governor
Joint Chair

MILTON RISTER
Executive Director

TOM CRADDI
Speaker of the H
Joint Chair

M E M O R A N D U M

TO: Members of the Legislature

FROM: Mark Brown
Director, Legal Division

DATE: January 23, 2007

SUBJECT: Local Bills and Bracket Bills

INTRODUCTION

This memorandum discusses the requirements of the statutes, the state constitution, and legislative rules relating to the publishing of notice of intent to apply for passage of a local or special bill. A local bill is a bill that applies to a limited area, and a special bill is one that applies to a single person or class. However, common use and misuse of "local" and "special" have made the two terms virtually synonymous as they relate to bills. This memorandum treats both as "local" bills.

This memorandum also discusses the legal and parliamentary standards governing consideration of bills limited to a particular class of political subdivisions or geographic areas through use of population or another classification device, commonly known as "bracket bills." Although often thought of as a local bill, a bracket bill is not a local bill but rather proposes general law.

Although this memorandum identifies general practice under past rules and presiding officers, it is the exclusive prerogative of each presiding officer to interpret and enforce the rules of the respective houses. Accordingly, no representation is made that this memorandum constitutes the final parliamentary authority in respect to the matters considered.

SUMMARY

To determine whether notice of intent to apply for passage of a local bill must be published, one must consider both the state constitution and the rules of the respective houses. The state constitution prohibits most local bills. However, for the several types of local bills that are constitutionally permitted, the constitution requires the publication of notice unless an exception to the requirement applies. The rules of both houses require publication of notice for six specific types of local bills.

A local bill for which the state constitution requires publication of notice is subject to a point of order if the notice is not given as required, even if the bill is of a type not listed in the rules. In both houses, a bill of either house that is local for purposes of the rules also is subject to a point of

order if notice is not published. Furthermore, under house rules such a bill is expressly ineligible for the local, consent, and resolutions calendar if notice is not published. However, a bill for which the constitution or rules require notice is probably not subject to successful court challenge after passage on the basis that notice was not given as required.

Local bills are not subject to the 60-day filing deadline applicable to other bills and joint resolutions.

A classification scheme in a bracket bill that is broad enough to include a substantial class or geographic area and is based on characteristics that legitimately distinguish that class or area from others in relation to the public purpose to be served does not run afoul of the constitutional prohibition on local bills. Also, an exception to that prohibition exists for a bill that affects people throughout the state or treats a subject that is a matter of interest across the state. However, the exception does not apply to a bill that has merely an incidental effect on a matter of apparent statewide importance. Ultimately, the standard for determining if a "bracketing" classification scheme creates a prohibited local law is whether there is a reasonable basis for the classification. The answer to two principal questions offers a shorthand guide to the validity of a classification scheme: (1) Are the classification criteria such that membership in the class may expand or contract? (2) Are the classification criteria reasonably related to the purpose of the law? If the answer to either question is "no," the classification is suspect.

LOCAL BILLS

Constitutional Requirements

(A) Local Bills Permitted by the Constitution

Section 56, Article III, Texas Constitution, provides a list of cases in which a local law is prohibited unless otherwise authorized by a constitutional provision. (See Appendix A.) The primary types of local bills permitted by the state constitution are bills:

(1) creating or affecting a conservation and reclamation district, including various kinds of water-related districts and similar special-purpose districts (Section 59, Article XVI);

(2) creating or affecting a hospital district (Sections 4 and 9, Article IX);

(3) relating to the preservation of game and fish (Section 56(b)(1), Article III);

(4) dealing with the courts system, including district courts, county courts, statutory county courts, and municipal courts (Sections 1, 7, 8, and 21, Article V);

(5) creating or affecting a road utility district or various water-related special districts (Section 52, Article III);

(6) granting aid or a release from the payment of taxes in cases of public calamity (Section 51, Article III; Section 10, Article VIII);

(7) creating or relating to the operation of airport authorities (Section 12, Article IX);

(8) providing for the consolidation of governmental offices and functions of political subdivisions comprising or located within a county (Section 64, Article III);

(9) relating to fence laws (Section 56(b)(2), Article III);

(10) relating to stock laws (Section 23, Article XVI); or

(11) providing for local road maintenance (Section 9(e), Article VIII).

Local bills included within the first five categories are similar to local bills as defined by the house and senate rules. However, with regard to category (1), the house and senate rules apply only to bills creating or affecting, in certain specific ways, a conservation and reclamation district. With regard to category (2), the house and senate rules apply only to local bills creating a hospital district under Section 9, Article IX, Texas Constitution. With regard to category (4), the house and senate rules apply only to county courts, statutory county courts, and courts of one or more specified counties or municipalities. And, with regard to category (5), the house and senate rules apply only to a road utility district.

Also, a discussion of local bills requires a special comment about three types of bills, the bills covered by categories (3) and (4) as well as bills relating to juvenile boards in specific localities. Those bills have the appearance of local bills and, as mentioned earlier, the state constitution even authorizes local bills in two of those three categories. Nonetheless, courts have determined that, although the bills appear to be local bills, they are in fact general bills because they relate to matters of general state interest. Therefore, for purposes of the constitution, the bills in category (3), various bills in category (4), and bills relating to juvenile boards are treated as general bills. With regard to category (4), the case law considers bills relating to district courts to be items of general state interest. The extent to which bills relating to county courts, statutory county courts, municipal courts, and other local courts would also be considered general bills is not settled. (Note that the bills discussed in this paragraph are general bills for purposes of the constitution, not necessarily for purposes of the house and senate rules. The house and senate rules must be examined separately.)

(B) Publication of Notice Under the Constitution

Section 57, Article III, Texas Constitution, requires that notice of intent to apply for passage of a local bill be published in the affected area at least 30 days before introduction of the bill. (See Appendix B.) Although courts and commentators have confused the meaning and application of Section 57, the only logical meaning that can be given to the provision is that publication of notice is required for any local bill permitted by the state constitution unless another provision of the constitution applying to the bill creates an exception to the publication requirement. To interpret Section 57 as requiring the publication of notice of a bill that Section 56, Article III, prohibits is illogical and violates the principle of statutory construction that every provision of a law (including a constitution) be given meaning if possible.

As discussed in a preceding part of this memorandum, courts have determined that bills dealing with the courts system, the preservation of game and fish, or juvenile boards are general bills for purposes of the publication of notice under the state constitution regardless of their local appearance and regardless of whether the constitution authorizes local bills for those subjects. (Two of those three types of bills are described by categories (3) and (4) in the earlier part of this memorandum relating to local laws permitted by the constitution.) Because those bills are general bills, the bills are not subject to the requirements under Section 57, Article III, for publication of notice.

Although the decisions of courts referenced in the preceding paragraph have been interpreted by some commentators to mean that publication of notice is not required under Section 57, Article III, in the areas in which local bills are specifically authorized by the state constitution, no court case has made a specific holding to that effect. One case, *Cravens v. State*, 122 S.W. 29 (Tex. Crim. App. 1909), indicates that notice is necessary for a local law specifically authorized by the constitution. There, a law applicable only to Galveston was upheld under a now-repealed constitutional provision authorizing city charter amendments by local law. The law was challenged partly on the basis that notice was not given. The court *presumed* that notice had been given because there was no proof to the contrary. That the court considered the notice issue and created the presumption must be based on an assumption of the court that notice was required. Otherwise, there would have been no need to create the presumption.

Another type of local bill, one relating to local road maintenance, is expressly excepted by Section 9(e), Article VIII, Texas Constitution, from all publication of notice requirements. (See Appendix C.) (This type of local bill is described by category (11) in the earlier part of this memorandum relating to local laws permitted by the constitution.)

In addition to Section 57, Article III, two constitutional provisions provide specific requirements for publication of notice. Section 9, Article IX, requires notice to be published of any bill *creating* a hospital district. (See Appendix D.) Section 9 does not require notice of bills *affecting* a hospital district. Section 59, Article XVI, which authorizes conservation and reclamation districts, including various kinds of water-related districts and similar special-purpose districts, requires that notice be published of a bill that creates a district or amends a law relating to a district for the purpose of adding land or altering the taxing authority, bonding authority, or qualifications or terms of governing board members. (See Appendix E.) Section 59 does not require notice of a bill that amends a district law for some other purpose.

Note that Sections 59(d) and (e), Article XVI, require that in some circumstances a copy of the notice and proposed local bill relating to a conservation and reclamation district be delivered to the governor and that a copy of the proposed bill be delivered, at the same time notice is published, to the governing bodies of affected counties and municipalities. No reported case has considered whether the copy of the bill provided must be identical to the introduced version of the bill. Also, parliamentary precedent holds that, in the absence of a statutory or parliamentary procedure for proof that a copy was delivered, the presiding officer has no basis on which to sustain a point of order that the required copy was not delivered. 74 S.J. 2458-2462.

It should be noted that the requirements for publication of notice in the state constitution are in addition to the requirements imposed by the house and senate rules. To determine whether notice is necessary, both the constitution and the rules must be considered.

(C) Attachment of Notice to the Bill as Required by the Constitution

Section 57, Article III, requires that evidence of the publication of notice be "exhibited" in the legislature before the local bill is "passed." In addition, the house and senate rules contain requirements for the attachment of the notice to a bill, and those rules also should be consulted.

Rules Requirements

(A) Local Bills Defined by the Rules

The rules of the senate and house for the 80th Legislature define "local bill" for the purposes of the publication of notice. The definitions, contained in Rule 9.01(b), Senate Rules, and Rule 8, Section 10(c), House Rules, provide that a bill is a local bill if it:

(1) is a bill for which publication of notice is required under Section 59, Article XVI, Texas Constitution, that is, a bill creating a conservation and reclamation district, including various kinds of water-related districts and similar special-purpose districts, or a bill amending a law relating to a district for the purpose of adding land or altering the taxing authority, bonding authority, or qualifications or terms of governing board members;

(2) is a bill for which publication of notice is required under Section 9, Article IX, Texas Constitution, that is, a bill creating a hospital district;

(3) relates to hunting, fishing, or conservation of wildlife resources of a specified locality;

(4) creates or affects a county court, statutory county court, or court of one or more specified counties or municipalities;

(5) creates or affects a county juvenile board of one or more specified counties; or

(6) creates or affects a road utility district under Section 52, Article III, Texas Constitution. (See Appendixes F and G.)

(B) Publication of Notice Under the Rules

The rules of the senate and house require the publication of notice of intent to apply for passage of a local bill. Rule 9.01(a), Senate Rules; Rule 8, Section 10(a), House Rules. (See Appendixes F and G.)

It should be noted that the publication of notice requirements in the rules of the senate and house are in addition to the requirements imposed by the state constitution. To determine whether notice is necessary, both the rules and the constitution must be considered.

(C) Attachment of Notice to the Bill as Required by the Rules

The rules of the senate and house require that evidence of the publication of notice be attached to a local bill. Rules 7.07(c) and 9.01(a), Senate Rules; Rule 8, Section 10(a), House Rules. (See Appendixes F and G.)

Rule 9.01(c), Senate Rules, and Rule 8, Section 10(d), House Rules, provide an exception to the notice requirements for bills described by categories (3), (4), and (5) in the earlier part of this memorandum relating to local laws defined by the rules. Those bills are excepted if they affect "a sufficient number of localities, counties, or municipalities so as to be of general application or of statewide importance." (Note that the rules require notice for bills described by those categories even though the constitution does not require notice.)

The initial determination of whether notice is required and is attached may be made at the time the bill is considered for referral to committee by the presiding officer. (See Rule 7.07(c), Senate Rules, providing that it is not in order to introduce a local bill unless the notice of publication is attached.) However, the issue is more likely to be first raised at a later stage. Under Rule 9.01(a),

Senate Rules, neither the senate nor a senate committee may consider a bill that requires notice but for which notice has not been published and attached to the bill. Under Rule 8, Section 10(a), House Rules, the house may not consider a local bill unless the required notice has been published and attached to the bill.

Neither the secretary of the senate nor the chief clerk of the house is prohibited by rule from accepting for filing a bill that requires notice but does not have the notice attached. Senate Rule 9.01(a) requires the notice "at the time of *introduction*," which suggests that the attachment of notice between filing with the secretary of the senate and first reading is permitted. (See Rule 7.05, which provides that senate bills are considered introduced when first read in the presence of the senate, and Rule 7.06, Senate Rules.) In contrast, Rule 8, Section 10(a), House Rules, clearly allows the notice to be attached after the bill is filed. That house rule provides that if the notice is not attached to the bill when the bill is filed with the chief clerk or when the bill is received from the senate, copies of the notice, after it has been timely published, shall be filed with the chief clerk and distributed to the committee members before the bill is first laid out in a committee meeting. Under those circumstances, the notice must be attached to the bill on first printing, that is, at the time of the committee report on the bill.

(D) Other Rules Applying to Local Bills: Eligibility for Calendar; Order of Business

Under Rule 6, Section 23(a), House Rules, a bill that is local for purposes of the house rules is ineligible for the house local, consent, and resolutions calendar if notice has not been published.

Rule 9.02, Senate Rules, provides that the constitutional order of business does not apply to local bills. Local bills are not subject to the 60-day filing deadline applicable to other bills and joint resolutions under Rule 7.08, Senate Rules, and Rule 8, Section 8, House Rules. Under the house rules, the kinds of local bills that are exempt from that filing deadline include a bill that "relates to" any specified special-purpose district, regardless of whether the constitution or the house rules require publication of notice for the bill. (Rule 8, Section 8(b), House Rules.)

Content of Notice; Procedure for Publication

The state constitution provides few details about the content or procedure for the publication of notice of intent to apply for passage of a local bill. Section 57, Article III, provides only that the notice shall: (1) be published in the affected locality, (2) state the substance of the local bill, (3) be published at least 30 days before introduction of the bill, and (4) be published "in the manner to be provided by law." Section 59, Article XVI, states, in regard to a local bill subject to that section, only that the notice shall: (1) contain the general substance of the local bill, (2) be published at least 30 and not more than 90 days before introduction of the bill, and (3) be published in a newspaper or newspapers of general circulation in the county or counties in which all or any part of the affected district is or will be located. Section 9, Article IX, states, in regard to a local bill subject to that section, only that 30 days' public notice to the affected district is required.

The rules of the senate and house state only that the publication of notice be made "as provided by law." Rules 7.07(c) and 9.01(a), Senate Rules; Rule 8, Section 10(a), House Rules.

Consequently, the primary source of details about the content and publication procedures for the notice are found in Chapter 313, Government Code. (See Appendix H.) Under Chapter 313:

(1) the notice must be published in a newspaper published in the county that includes the affected area;

(2) the notice must state the general purpose and substance of the proposed law (publication of the caption of the proposed bill [see Appendix I] in conjunction with the form included in Appendix J should be sufficient);

(3) if more than one county is covered by the proposed bill, notice must be given in each of the counties affected;

(4) if no newspaper is published in a county covered by the proposed bill, notice must be posted on the courthouse door and in five other places in the county for at least 30 days before the bill is introduced;

(5) proof of publication is made by obtaining an affidavit of publication from the newspaper publisher together with a copy of the published notice;

(6) if notice is accomplished by posting, proof of posting may be shown by the return of the sheriff or constable or by an affidavit of a credible person made on a copy of the posted notice; and

(7) a copy of the notice, plus a copy of the affidavit or return, must be attached to each copy of the bill when it is introduced (photocopies of these documents are sufficient).

Enforcement

A point of order may be raised during the legislative process in connection with the requirements to publish notice of intent to apply for passage of a local bill and to attach a copy of the notice to the bill. A local bill for which the state constitution requires publication of notice is subject to a point of order if the constitutional requirements are not followed, even if the bill is of a type not listed in the rules. In both houses, a bill of either house that is local for purposes of the rules is also subject to a point of order if the requirements of the rules are not followed.

However, a bill for which the constitution or rules require the publication of notice is probably not subject to successful court challenge if the notice requirements are not followed. In *Moore v. Edna Hospital Dist.*, 449 S.W.2d 508 (Tex. Civ. App.—Corpus Christi 1969, writ ref'd n.r.e.), the court held that passage of an act that requires notice is conclusive of the fact that notice was given, applying the enrolled bill rule to prevent a judicial determination that the proper procedures were not followed. Under this case, a bill may not be invalidated because it was passed without required notice. Also, in *Save Our Springs Alliance, Inc. v. Lazy Nine Mun. Utility Dist.*, 198 S.W.3d 300, 313-315 (Tex. App.—Texarkana 2006, pet. filed), the court ruled that, in a trial in which a claim is raised that the notice was not properly published, the enrolled bill rule requires that evidence on the issue be excluded. As a result, compliance with the notice requirements, both the constitutional and rules requirements, during the legislative process is the primary issue in determining whether to publish notice.

BRACKET BILLS

A bill that is limited to a particular class of political subdivisions or geographic areas through use of population or another classification device (commonly known as a "bracket bill") is not a local bill but rather proposes general law. If the classification is reasonable or is determined by characteristics bearing a logical relationship to the purpose of the law, the bill does not violate the constitutional prohibition on local laws. *Miller v. El Paso County*, 150 S.W.2d 1000, 1002 (Tex. 1941). In general, laws employing a classification scheme are valid unless the classification scheme is so narrow as to constitute an unconstitutional local law.

Because a bracket bill by definition proposes general law, publication of notice is not necessary or useful. Similarly, publication of notice on a bracket bill will not save the bill from constitutional infirmity. Rule 8, Section 10(b), House Rules, expressly provides that a population bracket bill is not a local bill for purposes of the notice requirement and may not be considered by the house or by committee if the bracket is for the purpose of avoiding designation of a political subdivision by name.

To survive a constitutional challenge under Section 56, Article III, a law that has limited application to a class of political subdivisions or geographic areas must be broadly drafted. The courts impose a three-part test to determine whether a classification used in a law creates a local law, and thus is invalid, or creates a general law, and thus is valid. To be a valid general law, the classification used in the law must: (1) "apply uniformly to all who may come within the classification designated" by the law, (2) "be broad enough to include a substantial class," and (3) "be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to be accomplished" by the law. *Miller*, 150 S.W.2d at 1001-1002.

The courts have given little discussion to the first part of the test, the uniform application requirement. The purpose of the requirement appears to be to ensure that political subdivisions and other geographic areas that come within the classification in the future are given the same treatment as the subdivisions and areas that are within the classification at the time of the law's enactment. *Morris v. City of San Antonio*, 572 S.W.2d 831, 833-834 (Tex. Civ. App.—Austin 1978, no writ); *Miller*, 150 S.W.2d at 1001.

The second part of the test, the "substantial class" requirement, is also treated only briefly by the courts. The meaning of this requirement is not entirely clear from the case law, but appears to be closely connected with the third part of the test. The purpose of the requirement appears to be to create a "real class," that is, a legitimate group of entities with similar characteristics that distinguish that group from others. *Miller*, 150 S.W.2d at 1002. It is clear that the controlling factor in determining whether a substantial class exists is *not* simply the number of political subdivisions or other geographic areas that fall within the defining criteria of the classification at the time the law that specifies the criteria is enacted. The courts have upheld classifications as substantial even though, at the time of enactment, the classifications contained only one or two members. *City of Irving v. Dallas/Fort Worth International Airport Board*, 894 S.W.2d 456 (Tex. App.—Fort Worth 1995, no writ); *Ex parte Spring*, 586 S.W.2d 482 (Tex. Crim. App. 1978); *Smith v. Davis*, 426 S.W.2d 827 (Tex. 1968). A relevant consideration is whether the class may expand or contract as the characteristics of class members and potential class members change over time.

The third part of the test, the requirement that a classification "be based on characteristics legitimately distinguishing such class from others with respect to the public purpose sought to

be accomplished" by the law, is the most important part of the test because it receives the closest scrutiny by the courts and is the most common basis for invalidating a law as a local law. This requirement is sometimes described as the "primary and ultimate test" of whether a law is a local law or general law, and it is sometimes stated more simply as a requirement that the classification have a "reasonable basis." *Rodriguez v. Gonzales*, 227 S.W.2d 791, 793 (Tex. 1950).

The requirement that a classification have a reasonable basis is an attempt by the courts to ensure that a statutory classification is real and is not a "pretended class" or an "artificial" distinction used by the legislature in an attempt to evade the constitutional prohibition on local laws. *Clark v. Finley*, 54 S.W. 343, 345 (Tex. 1899); *Public Utility Commission of Texas v. Southwest Water Services, Inc.*, 636 S.W.2d 262, 264 (Tex. App.—Austin 1982, writ ref'd n.r.e.). A classification "must not be a mere arbitrary device resorted to for the purpose of giving what is, in fact, a local law the appearance of a general law." *Miller*, 150 S.W.2d at 1002.

In determining whether a classification meets the reasonable basis requirement, the classification may be analyzed in either of two ways. Under the first method of analysis, the purposes and subject of the law must first be identified. The criteria used to create the classification then must be examined. The criteria used to create the classification must have a *real* relationship to the object sought to be accomplished by the law. *Miller*, 150 S.W.2d at 1002. The criteria must be related to the subject of the law in such a way to show that the intent of the legislature was to legislate on a subject generally and not to single out one entity. *Bexar County v. Tynan*, 97 S.W.2d 467, 470 (Tex. 1936). It is clear from the case law that some suspicions are raised about a classification if only one entity is included in the classification at the time of enactment. *Miller*, 150 S.W.2d 1000; *Tynan*, 97 S.W.2d 467; *Smith*, 426 S.W.2d 827.

Statutes that use only a single population criterion and that apply to all localities above that figure have fared much better in the courts. See, for example, *Ex parte Spring*, 586 S.W.2d 482 (Tex. Crim. App. 1978) (upholding legislation affecting municipal courts in cities with a population of more than 1.2 million); *Robinson v. Hill*, 507 S.W.2d 521 (Tex. 1974) (upholding special bail bond regulations in counties with a population of 150,000 or more); *Smith*, 426 S.W.2d 827 at 830-832 (upholding special ad valorem tax rules for hospital districts in counties with a population greater than 650,000 and operating a teaching hospital).

A classification scheme that is based on existing circumstances alone and that does not allow for new members to join the classification may not, in most cases, be used to limit the application of a law. For example, bills using population criteria tied to a specific census violate Section 56, Article III. *City of Fort Worth v. Bobbitt*, 36 S.W.2d 470 (Tex. Comm'n. App. 1931, opinion adopted). However, in limited circumstances, a closed class may be upheld if a reasonable basis for the class is found. A closed class composed of coastal counties in which an island suitable for park purposes is located was found to be reasonable in light of the statewide interest in and demand for parks in coastal areas as opposed to other geographic regions. *County of Cameron v. Wilson*, 326 S.W.2d 162 (Tex. 1959). See also *Public Utility Commission of Texas*, 636 S.W.2d at 264-267 (applying, in effect, the reasonable basis test to a class that by its terms is closed to future members).

A second method of analysis for determining whether a classification in a law has a reasonable basis requires an examination of the statewide impact of the law. A statute treating a specific locality does not violate the local law prohibition if people throughout the state are affected by the

statute or if the statute treats a subject that is a matter of interest to people throughout the state. *Dallas/Fort Worth International Airport Board*, 894 S.W.2d at 466-467; *Smith*, 426 S.W.2d at 832; *Wilson*, 326 S.W.2d at 165-166; *Lower Colorado River Authority v. McCraw*, 83 S.W.2d 629, 636 (Tex. 1935). This method of analysis attempts to determine whether the law "deals with a matter of general rather than purely local interest." *Wilson*, 326 S.W.2d at 165. Normally, a law will not be considered to have a sufficient statewide impact unless it affects "a substantial class of persons over a broad region of the state." *Maple Run at Austin Mun. Utility Dist. v. Monaghan*, 931 S.W.2d 941, 945 (Tex. 1996); *City of Austin v. City of Cedar Park*, 953 S.W.2d 424, 435 (Tex. App.—Austin 1997, no writ). An incidental effect on a matter of statewide importance is insufficient. *Maple Run*, 931 S.W.2d at 948. Furthermore, even if the law does affect a matter of statewide importance, a reasonable connection must exist between the classification used in the law and the statewide interest. *Maple Run*, 931 S.W.2d at 948.

As a practical matter, two principal considerations will provide a reasonably accurate guide to determining whether a proposed law will meet the constitutional tests:

(1) *Are the classification criteria such that membership in the class may expand or contract?* If the answer is "no," the classification scheme is suspect. If the answer is "yes," the classification scheme itself may be valid, but the second question must also be considered. The greater the number of criteria in the classification scheme, the narrower the class becomes and the more difficult it is for a change in circumstances to bring an excluded entity into the class. Therefore, the greater the number of classification criteria, the more constitutionally suspect the scheme.

(2) *Are the classification criteria reasonably related to the purpose of the bill?* If the answer is "no," the statute employing the scheme is likely invalid. If the answer is "yes," the statute is likely valid. The more difficult it is to identify a connection between the purpose of the bill and the classification criteria used to describe the class, the more likely it is that the criteria exist only for the purpose of narrowing the class.

APPENDIX A. LOCAL OR SPECIAL LAWS PROHIBITED

Section 56, Article III, Texas Constitution

Sec. 56. (a) The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:

(1) the creation, extension or impairing of liens;

(2) regulating the affairs of counties, cities, towns, wards or school districts;

(3) changing the names of persons or places;

(4) changing the venue in civil or criminal cases;

(5) authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys;

(6) relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State;

(7) vacating roads, town plats, streets or alleys;

(8) relating to cemeteries, grave-yards or public grounds not of the State;

(9) authorizing the adoption or legitimation of children;

(10) locating or changing county seats;

(11) incorporating cities, towns or villages, or changing their charters;

(12) for the opening and conducting of elections, or fixing or changing the places of voting;

(13) granting divorces;

(14) creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;

(15) changing the law of descent or succession;

(16) regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate;

(17) regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;

(18) regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;

(19) fixing the rate of interest;

(20) affecting the estates of minors, or persons under disability;

(21) remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;

(22) exempting property from taxation;

(23) regulating labor, trade, mining and manufacturing;

(24) declaring any named person of age;

(25) extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability;

(26) giving effect to informal or invalid wills or deeds;

(27) summoning or empanelling grand or petit juries;

(28) for limitation of civil or criminal actions;

(29) for incorporating railroads or other works of internal improvements; or

(30) relieving or discharging any person or set of persons from the performance of any public duty or service imposed by general law.

(b) In addition to those laws described by Subsection (a) of this section in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing:

(1) special laws for the preservation of the game and fish of this State in certain localities; and

(2) fence laws applicable to any subdivision of this State or counties as may be needed to meet the wants of the people.

APPENDIX B. GENERAL NOTICE REQUIREMENT FOR LOCAL OR SPECIAL BILLS

Section 57, Article III, Texas Constitution

Sec. 57. No local or special law shall be passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the Legislature of such bill and in the manner to be provided by law. The evidence of such notice having been published, shall be exhibited in the Legislature, before such act shall be passed.

APPENDIX C. LOCAL LAWS FOR ROADS AND HIGHWAYS

Section 9(e), Article VIII, Texas Constitution

(e) The Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws.

APPENDIX D. NOTICE REQUIRED FOR SPECIAL LAWS CREATING HOSPITAL DISTRICTS

Section 9, Article IX, Texas Constitution

Sec. 9. . . .

Provided, however, that no [hospital] district shall be created by special law except after thirty (30) days' public notice to the district affected, and . . . .

APPENDIX E. NOTICE REQUIRED FOR LOCAL LAWS CONCERNING CONSERVATION AND RECLAMATION DISTRICTS

Sections 59(d) and (e), Article XVI, Texas Constitution

(d) No law creating a conservation and reclamation district shall be passed unless notice of the intention to introduce such a bill setting forth the general substance of the contemplated law shall have been published at least thirty (30) days and not more than ninety (90) days prior to the introduction thereof in a newspaper or newspapers having general circulation in the county or counties in which said district or any part thereof is or will be located and by delivering a copy of such notice and such bill to the Governor who shall submit such notice and bill to the Texas Water Commission, or its successor, which shall file its recommendation as to such bill with the Governor, Lieutenant Governor and Speaker of the House of Representatives within thirty (30) days from date notice was received by the Texas Water Commission. Such notice and copy of bill shall also be given of the introduction of any bill amending a law creating or governing a particular conservation and reclamation district if such bill (1) adds additional land to the district, (2) alters the taxing authority of the district, (3) alters the authority of the district with respect to the issuance of bonds, or (4) alters the qualifications or terms of office of the members of the governing body of the district.

(e) No law creating a conservation and reclamation district shall be passed unless, at the time notice of the intention to introduce a bill is published as provided in Subsection (d) of this section, a copy of the proposed bill is delivered to the commissioners court of each county in which said district or any part thereof is or will be located and to the governing body of each incorporated city or town in whose jurisdiction said district or any part thereof is or will be located. Each such commissioners court and governing body may file its written consent or opposition to the creation of the proposed district with the governor, lieutenant governor, and speaker of the house of representatives. Each special law creating a conservation and reclamation district shall comply with the provisions of the general laws then in effect relating to consent by political subdivisions to the creation of conservation and reclamation districts and to the inclusion of land within the district.

APPENDIX F. HOUSE RULES

Rule 6, Section 23, House Rules

Sec. 23. QUALIFICATIONS FOR PLACEMENT ON THE LOCAL, CONSENT, AND RESOLUTIONS CALENDAR. (a) No bill defined as a local bill by Rule 8, Section 10(c), shall be placed on the local, consent, and resolutions calendar unless:

(1) evidence of publication of notice in compliance with the Texas Constitution and these rules is filed with the Committee on Local and Consent Calendars; and

(2) it has been recommended unanimously by the present and voting members of the committee from which it was reported that the bill be sent to the Committee on Local and Consent Calendars for placement on the local, consent, and resolutions calendar.

(b) No other bill or resolution shall be placed on the local, consent, and resolutions calendar unless it has been recommended unanimously by the present and voting members of the committee from which it was reported that the bill be sent to the Committee on Local and Consent Calendars for placement on the local, consent, and resolutions calendar.

(c) No bill or resolution shall be placed on the local, consent, and resolutions calendar that:

(1) directly or indirectly prevents from being available for purposes of funding state government generally any money that under existing law would otherwise be available for that purpose, including a bill that transfers or diverts money in the state treasury from the general revenue fund to another fund; or

(2) authorizes or requires the expenditure or diversion of state funds for any purpose, as determined by a fiscal note attached to the bill.

Rule 8, Section 8, House Rules

Sec. 8. DEADLINE FOR INTRODUCTION. (a) Bills and joint resolutions introduced during the first 60 calendar days of the regular session may be considered by the committees and in the house and disposed of at any time during the session, in accordance with the rules of the house. After the first 60 calendar days of a regular session, any bill or joint resolution, except local bills, emergency appropriations, and all emergency matters submitted by the governor in special messages to the legislature, shall require an affirmative vote of four-fifths of those members present and voting to be introduced.

(b) In addition to a bill defined as a "local bill" under Section 10(c) of this rule, a bill is considered local for purposes of this section if it relates to a specified district created under Article XVI, Section 59, of the Texas Constitution (water districts, etc.), a specified hospital district, or another specified special purpose district, even if neither these rules nor the Texas Constitution require publication of notice for that bill.

Rule 8, Sections 9(b) and (c), House Rules

(b) Fifteen copies of every bill relating to conservation and reclamation districts and governed by the provisions of Article XVI, Section 59, of the Texas Constitution, with copies of the notice to introduce the bill attached, must be filed with the chief clerk at the time that the bill is introduced if the bill is intended to:

(1) create a particular conservation and reclamation district; or

(2) amend the act of a particular conservation and reclamation district to:

(A) add additional land to the district;

(B) alter the taxing authority of the district;

(C) alter the authority of the district with respect to issuing bonds; or

(D) alter the qualifications or terms of office of the members of the governing body of the district.

(c) No bill may be laid before the house on first reading until it is in compliance with the provisions of this section.

Rule 8, Section 10, House Rules

Sec. 10. LOCAL BILLS. (a) The house may not consider a local bill unless notice of intention to apply for the passage of the bill was published as provided by law and evidence of the publication is attached to the bill. If not attached to the bill on filing with the chief clerk or receipt of the bill from the senate, copies of the evidence of timely publication shall be filed with the chief clerk and must be distributed to the members of the committee not later than the first time the bill is laid out in a committee meeting. The evidence shall be attached to the bill on first printing and shall remain with the measure throughout the entire legislative process, including submission to the governor.

(b) Neither the house nor a committee of the house may consider a bill whose application is limited to one or more political subdivisions by means of population brackets or other artificial devices in lieu of identifying the political subdivision or subdivisions by name. However, this subsection does not prevent consideration of a bill that classifies political subdivisions according to a minimum or maximum population or other criterion that bears a reasonable relation to the purpose of the proposed legislation or a bill that updates laws based on population classifications to conform to a federal decennial census.

(c) Except as provided by Subsection (d) of this section, "local bill" for purposes of this section means:

(1) a bill for which publication of notice is required under Article XVI, Section 59, of the Texas Constitution (water districts, etc.);

(2) a bill for which publication of notice is required under Article IX, Section 9, of the Texas Constitution (hospital districts);

(3) a bill relating to hunting, fishing, or conservation of wildlife resources of a specified locality;

(4) a bill creating or affecting a county court or statutory court or courts of one or more specified counties or municipalities;

(5) a bill creating or affecting the juvenile board or boards of a specified county or counties; or

(6) a bill creating or affecting a road utility district under the authority of Article III, Section 52, of the Texas Constitution.

(d) A bill is not considered to be a local bill under Subsection (c)(3), (4), or (5) if it affects a sufficient number of localities, counties, or municipalities so as to be of general application or of statewide importance.

APPENDIX G. SENATE RULES

Rule 7.07(c), Senate Rules

(c) It shall not be in order to introduce a local bill as defined by Rule 9.01 unless notice of publication, as provided by law, is attached.

Rule 7.08, Senate Rules

Rule 7.08. CONSIDERATION OF EMERGENCY MATTERS. At any time during the session, resolutions, emergency appropriations, emergency matters specifically submitted by the Governor in special messages to the Legislature, and local bills (as defined in Rule 9.01) may be filed with the Secretary of the Senate, introduced and referred to the proper committee, and disposed of under the rules of the Senate.

Rule 9.01, Senate Rules

Rule 9.01. DEFINITION OF LOCAL BILL. (a) Neither the Senate nor a committee of the Senate may consider a local bill unless notice of intention to apply for the passage of the bill was published as provided by law and evidence of the publication was attached to the bill at the time of introduction.

(b) Except as provided by Subsection (c) of this rule, "local bill" for purposes of this article means:

(1) a bill for which publication of notice is required under Article XVI, Section 59, of the Texas Constitution (water districts, etc.);

(2) a bill for which publication of notice is required under Article IX, Section 9, of the Texas Constitution (hospital districts);

(3) a bill relating to hunting, fishing, or conservation of wildlife resources of a specified locality;

(4) a bill creating or affecting a county court or statutory court or courts of one or more specified counties or municipalities;

(5) a bill creating or affecting the juvenile board or boards of a specified county or counties; or

(6) a bill creating or affecting a road utility district under the authority of Article III, Section 52, of the Texas Constitution.

(c) A bill is not considered to be a local bill under Subsection (b)(3), (4), or (5) of this rule if it affects a sufficient number of localities, counties, or municipalities so as to be of general application or of statewide importance.

Rule 9.02, Senate Rules

Rule 9.02. INTRODUCTION AND CONSIDERATION OF LOCAL BILLS. The constitutional procedure with reference to the introduction, reference to a committee, and the consideration of bills set forth in Article III, Section 5, of the Texas Constitution, shall not apply to local bills herein defined, and the same may be introduced, referred, reported, and acted upon at any time under the general rules and order of business of the Senate.

APPENDIX H. GENERAL LAW

GOVERNMENT CODE

CHAPTER 313. NOTICE FOR LOCAL AND SPECIAL LAWS

Sec. 313.001. NOTICE. A person who intends to apply for the passage of a local or special law must give notice of that intention as prescribed by this chapter.

Sec. 313.002. PUBLICATION OR POSTING OF NOTICE FOR LAWS AFFECTING LOCALITIES. (a) A person who intends to apply for the passage of a local or special law must publish notice of that intention in a newspaper published in the county embracing the locality the law will affect.

(b) The notice must be published once not later than the 30th day before the date on which the intended law is introduced in the legislature.

(c) The notice is sufficient if it contains a statement of the general purpose and substance of the intended law. Publication of the particular form of the intended law or the terms used in the intended law is not required.

(d) If the intended law will affect more than one county, the person applying for passage of the law must publish notice in each county the law will affect.

(e) If a newspaper is not published in the county, the person applying for passage of the law must post the notice at the courthouse door and at five other public places in the immediate locality in the county the law will affect.

(f) The posted notice must accurately define the locality the law will affect.

(g) The notice must be posted for at least 30 days.

Sec. 313.003. PUBLICATION OF NOTICE FOR LAWS PRIMARILY AFFECTING PERSONS. (a) If a resident of this state intends to apply for passage of a law that will primarily affect persons and will not directly affect a particular locality more than it will affect another, the person applying for passage must publish notice in a newspaper published in the county in which the person resides in the same manner as if the law will affect the locality.

(b) If the applicant is not a resident of this state, publication of notice in a newspaper published in Austin is sufficient.

Sec. 313.004. PROOF OF PUBLICATION OR POSTING. (a) If publication of notice in a newspaper is required by law, proof of publication shall be made by the affidavit of the publisher accompanied by a printed copy of the notice as published.

(b) Proof of posting may be made by the return of the sheriff or constable or by the affidavit of a credible person made on a copy of the posted notice showing the fact of the posting.

Sec. 313.005. INTRODUCTION OF LAW. When a local or special law is introduced in the legislature, the law must be accompanied by competent proof that notice was given.

Sec. 313.006. NOTICE FOR LAWS ESTABLISHING MUNICIPAL MANAGEMENT DISTRICTS. (a) In addition to the other requirements of this chapter, a person, other than a member of the legislature, who intends to apply for the passage of a law establishing a special district that incorporates a power from Chapter 375, Local Government Code, must provide notice as provided by this section.

(b) The person shall notify by mail each person who owns real property in the proposed district, according to the most recent certified tax appraisal roll for the county in which the real property is owned. The notice, properly addressed with postage paid, must be deposited with the United States Postal Service not later than the 30th day before the date on which the intended law is introduced in the legislature.

(c) The notice is sufficient if it contains a statement of the general purpose and substance of the intended law. Notice of the particular form of the intended law or the terms used in the intended law is not required.

(d) The person is not required to mail notice to a person who owns real property in the proposed district if the property cannot be subject to an assessment by the district.

APPENDIX I. NOTICE OF INTENT TO INTRODUCE

NOTICE

This is to give notice of intent to introduce in the 80th Legislature, Regular Session, a bill to be entitled an Act (insert here the caption of the bill, e.g., "relating to creation of the Tidewater Hospital District.").

APPENDIX J. PUBLISHER'S AFFIDAVIT OF PUBLICATION

PUBLISHER'S AFFIDAVIT

STATE OF TEXAS

COUNTY OF _____

Before me, a Notary Public in and for _____ County, this day personally appeared (insert name and title of person who signs the affidavit, such as "Richard Roe, Classifieds Manager, Metropolis News"), who, being duly sworn, states that the following advertisement was published in (insert name of the newspaper) on (insert date of publication):

(Here affix a copy of the advertisement. If the advertisement is too large to be affixed in the space allowed, substitute "attached" for "following" in the introduction and affix a copy of the advertisement on a page to be attached.)

(signature of affiant)

Sworn to and subscribed before me this _____ day of _____, ___.

(signature of notary)

Appendix 8

DRAFTING PUBLIC SECURITIES PROVISIONS

A. INTRODUCTION

B. TYPES OF PUBLIC SECURITIES
   1. Bonds
      a. General obligation bonds
      b. Revenue bonds
   2. Other Public Securities

C. CONSTITUTIONAL PROVISIONS
   1. General Obligation Bonds
      a. State
      b. Political subdivisions
      c. Property ownership
   2. Revenue Bonds
   3. Interest Rate

D. GENERAL LAW PROVISIONS
   1. Public Security Procedures Act
   2. Examination by Attorney General and Registration by Comptroller
   3. Registrar for Public Security
   4. Interest Rate
   5. Refunding Bonds
   6. Bonds as Authorized Investments
   7. Provisions of Other General Laws Applying to Special Districts

E. PLACEMENT OF PUBLIC SECURITIES PROVISIONS

A. INTRODUCTION

The legislature frequently addresses areas of the law that involve the issuance of public securities by the state or a political subdivision of the state. Typically, public securities are authorized for capital improvements such as roads, schools, and water projects, but some public securities are issued to provide for a fund for some other purpose, such as the making of student loans.

Drafting a statute authorizing public securities is not particularly difficult, but the drafter should be familiar with a number of generally applicable constitutional provisions and statutes. In the past, statutes authorizing public securities frequently contained provisions that duplicated or were superseded by general law. In 1999, the legislature adopted the Public Securities Title (Title 9, Government Code),[1] which codified the general laws relating to public securities. The Public Securities Title also contains numerous provisions authorizing the issuance of public securities for specific purposes. In codifying those provisions, council staff eliminated many provisions that duplicated or were superseded by general law.

Many statutes outside the Public Securities Title authorize public securities.[2] Most of these statutes predate the Public Securities Title and contain provisions duplicating general law; use of such a statute as a model for new legislation is not recommended. In revising the statutes that became the Special District Local Laws Code, council staff again eliminated many unnecessary public securities provisions. Public securities provisions in that code may be suitable models for similar statutes.

B. TYPES OF PUBLIC SECURITIES

"Public security" is a broad term used in the Public Securities Title to describe various types of obligations issued by governmental entities, including bonds, notes, warrants, and certificates.[3]

1. Bonds

Although there is no standard definition of "bond," the word is typically used to refer to obligations that have relatively long terms, frequently 20 or 40 years. Bonds are often characterized as "general obligation bonds" or "revenue bonds."

a. General obligation bonds

General obligation bonds are backed by the taxing power of the governmental entity issuing the bonds. State general obligation bonds are a first draw on money coming into the treasury and are paid from the various types of taxes, including sales and use taxes, corporate franchise taxes, and occupation taxes, that go into the general revenue fund.[4]

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[1]See Chapter 227 (H.B. 3157), Acts of the 76th Legislature, Regular Session, 1999.

[2]Public securities provisions may be found in other titles of the Government Code and in the Agriculture Code, Education Code, Health and Safety Code, Local Government Code, Natural Resources Code, Parks and Wildlife Code, Special District Local Laws Code, Transportation Code, Utilities Code, and Water Code.

[3]See, e.g., Sections 1201.002, 1202.001, 1203.001, and 1205.001, Government Code.

[4]For an example of state general obligation bonds, see Section 49-h, Article III, Texas Constitution, and Chapter 1401, Government Code.

General obligation bonds issued by political subdivisions are typically paid from ad valorem taxes, with the issuer contracting to levy ad valorem taxes at whatever rate is necessary to pay the bonds.[5] (State ad valorem taxes are constitutionally prohibited.[6])

b. Revenue bonds

Revenue bonds are backed by a specific stream of non-tax revenue,[7] such as highway tolls or rent from a facility.[8] In some cases, the revenue stream is fictitious. For example, under Chapter 1232, Government Code, to pay for state office buildings the Texas Public Finance Authority may issue revenue bonds that are paid from lease revenue the authority receives from a state agency or the Texas Facilities Commission on behalf of a state agency.[9] The ultimate source of the money to pay the bonds is the general revenue fund. The statute specifically provides that obligations issued by the authority are not debts of the state or a pledge of the state's credit.[10]

2. Other Public Securities

Among the many types of public securities are "notes,"[11] "warrants" or "time warrants,"[12] "certificates of obligation,"[13] and "certificates of indebtedness."[14] There are no general definitions of these types of public securities. Different statutes may define the terms slightly differently.

C. CONSTITUTIONAL PROVISIONS

The Texas Constitution contains both general provisions relating to the issuance of bonds by the state and political subdivisions and specific provisions that authorize the issuance of bonds for particular purposes.[15] Only the general provisions are discussed below.

1. General Obligation Bonds

a. State

Section 49(a), Article III, Texas Constitution, prohibits the creation of a debt by or on behalf of the state, except to "supply casual deficiencies of revenue, not to exceed in the aggregate at any one time two hundred thousand dollars," to "repel invasion, suppress insurrection, or defend the State in war," or as otherwise provided by the constitution. To

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[5]For an example of political subdivision general obligation bonds, see Section 52, Article III, Texas Constitution, and Chapter 1471, Government Code.

[6]Section 1-e, Article VIII, Texas Constitution.

[7]Although in common usage "revenue" includes tax revenue, in the practice of public securities laws, "revenue" does not include tax revenue.

[8]For examples of revenue bonds, see Chapter 1504, Government Code.

[9]See Sections 1232.102 and 1232.116, Government Code.

[10]Section 1232.117, Government Code. In *Texas Public Building Authority v. Mattox*, 686 S.W.2d 924 (Tex. 1985), relying in part on the statutory predecessor to Section 1232.117, the supreme court held that this method of financing state buildings does not violate Section 49, Article III, Texas Constitution, which generally prohibits the state from incurring debt (see Part C.1.a below).

[11]For an example of notes, see Chapter 1431, Government Code.

[12]For an example of time warrants, see Subchapter C, Chapter 262, Local Government Code.

[13]For an example of certificates of obligation, see Subchapter C, Chapter 271, Local Government Code.

[14]For an example of certificates of indebtedness, see Subchapter D, Chapter 1501, Government Code.

[15]Examples of provisions of the Texas Constitution authorizing specific bonds include Section 50b-5, Article III (issuance of general obligation bonds by the Texas Higher Education Coordinating Board to finance student loans), and Section 50c, Article III (issuance of general obligation bonds by the commissioner of agriculture to finance farm and ranch loans).

avoid violating the constitutional restriction on debt, state general obligation bonds have historically been authorized by passage and voter approval of a constitutional amendment. A 1999 amendment to the constitution removed or consolidated many of the existing state general obligation bond provisions.[16]

As an alternative to a constitutional amendment authorizing debt, Sections 49(b)–(g), Article III, provide for an election on the issuance of state debt. Because Section 49(b) requires a joint resolution approved by two-thirds of the members of each house and an election held in the same manner as an election on a constitutional amendment, the only practical difference is that a debt proposition, if adopted by the voters, does not become a part of the constitution.[17]

b. Political subdivisions

Sections 5 and 7, Article XI, Texas Constitution, provide that a municipality or county may not incur a "debt" unless the municipality or county provides for an annual ad valorem tax sufficient to pay the interest on the debt and to establish a sinking fund of at least two percent.

Section 52(b), Article III, provides specific authority for a county, a political subdivision of a county, two or more adjacent counties, a municipality or other political subdivision of the state, or a "defined district" to issue general obligation bonds for the following purposes:

(1) improving rivers, creeks, and streams to prevent overflows and permit navigation, or to provide irrigation thereof, or in aid of those purposes;

(2) constructing and maintaining pools, lakes, reservoirs, dams, canals, and waterways for irrigation, drainage, or navigation, or in aid of those purposes; or

(3) constructing, maintaining, and operating paved roads and turnpikes, or in aid of that purpose.

Bonds issued under Section 52(b) require "a vote of two-thirds majority of the voting qualified voters of such district or territory to be affected thereby." The bonds may not exceed one-fourth of the assessed valuation of the district's or territory's real property, and "the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution."[18]

Section 52(c), Article III, provides specific authority for a county to issue general obligation bonds "in an amount not to exceed one-fourth of the assessed valuation of the real property in the county" to construct, maintain, and operate paved roads and turnpikes, or in aid of those purposes, on "a vote of a majority of the voting qualified voters of the county."

Both Sections 52(b) and (c) authorize a political subdivision issuing bonds to levy taxes to provide for a sinking fund for the redemption of the bonds.

Section 52(d), Article III, specifically authorizes a "defined district created under this section that is authorized to issue bonds or otherwise lend its credit for the purposes stated in [Sections 52(b)(1) and (2) to] issue bonds or otherwise lend its credit for fire-fighting purposes as provided by law and this constitution."

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[16]See H.J.R. No. 62, Acts of the 76th Legislature, Regular Session, 1999.

[17]As of August 2008, the legislature had not adopted a joint resolution on a debt proposition.

[18]Section 52(b), Article III, Texas Constitution.

Although there is no specific constitutional provision or case law establishing a general rule that a political subdivision must have specific constitutional authority to levy ad valorem taxes[19] or issue general obligation bonds, political subdivisions have typically been authorized to take those actions only with express constitutional authority.[20]

However, in 2005, the legislature by statute authorized the creation of "multi-jurisdictional library districts" with the authority to impose ad valorem taxes.[21] The attorney general, after reviewing case law and previous attorney general opinions, stated, "it is more likely than not that a court would find that a multi-jurisdictional library district . . . lacks authority to assess and collect ad valorem taxes on property within the district, absent express constitutional authorization."[22] In light of the attorney general's opinion, it is advisable to amend the constitution if the intent is to grant a political subdivision the authority to impose ad valorem taxes.

The constitutional provisions authorizing ad valorem taxes frequently require voter approval of the tax rate, authorize the issuance of bonds, and prescribe the vote necessary for approval of bonds. Note that Section 3a, Article VI, provides that in an election by a political subdivision to "[issue] bonds or otherwise [lend its] credit," only "qualified voters of the . . . political sub-division . . . where such election is held shall be qualified to vote."

c. Property ownership

Numerous statutes have provided that to be eligible to vote in an election to authorize general obligation bonds a person must be a property owner and taxpayer. These provisions are generally invalid; in *Hill v. Stone*, 421 U.S. 289, 95 S. Ct. 1637 (1975), the United States Supreme Court determined that property ownership as a qualification for voting is an unconstitutional denial of equal protection. The same 1999 constitutional amendment referenced in footnote 15 eliminated references in the Texas Constitution to property ownership as a qualification for voting.

2. Revenue Bonds

The Supreme Court of Texas has held that revenue bonds are not "debts" for purposes of the constitutional ban under Section 49(a), Article III,[23] or the restrictions under Sections 5 and 7, Article XI.[24] One practical effect of this distinction is that revenue bonds may be issued constitutionally without an election, though some statutes authorizing revenue bonds require or permit an election.[25]

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[19]See *Shepherd v. San Jacinto Junior College District*, 363 S.W.2d 742 (Tex. 1962); *City of Humble v. Metropolitan Transit Authority*, 636 S.W.2d 484 (Tex. App.—Austin 1982, writ ref'd n.r.e.).

[20]See Section 48-e, Article III (emergency services districts); Section 48-f, Article III (jail districts); Section 52, Article III (various political subdivisions); Section 3(e), Article VII (school districts, including independent school districts and junior college districts); Sections 1-a and 9, Article VIII (counties and municipalities); Sections 4–9, 9B, and 11, Article IX (hospital districts); Section 12, Article IX (airport authorities); Sections 4, 5, and 7, Article XI (municipalities); Section 59, Article XVI (conservation and reclamation districts).

[21]See Chapter 336, Local Government Code.

[22]See Op. Tex. Att'y Gen. No. GA-0626 (2008).

[23]*Texas National Guard Armory Board v. McCraw*, 126 S.W.2d 627 (Tex. 1939); *Texas Public Building Authority v. Mattox*, 686 S.W.2d 924 (Tex. 1985).

[24]*Lower Colorado River Authority v. McCraw*, 83 S.W.2d 629 (Tex. 1935).

[25]See Section 1505.061, Government Code (election required to issue revenue bonds for certain bridge projects if voters petition for election); Section 1506.005, Government Code (election not required to issue revenue bonds for certain parking facilities, but governing body of municipality may call election).

3. Interest Rate

As amended in 1982,[26] Section 65(a), Article III, Texas Constitution, provides that:

> Wherever the Constitution authorizes an agency, instrumentality, or subdivision of the State to issue bonds and specifies the maximum rate of interest which may be paid on such bonds issued pursuant to such constitutional authority, such bonds may bear interest at rates not to exceed a weighted average annual interest rate of 12% unless otherwise provided by Subsection (b) of this section [which prescribes a maximum net effective interest rate of 10% per year for certain bonds issued by the Veterans' Land Board]. All Constitutional provisions specifically setting rates in conflict with this provision are hereby repealed.

Section 65 clearly supersedes any provision setting interest rates that was in effect when the 1982 amendment was adopted. Presumably, a later amendment that prescribes a different rate would take precedence over Section 65. Also, Section 65 does not, by its own terms, apply if a constitutional provision does not prescribe a maximum interest rate.[27] Public securities authorized by the constitution as to which the constitution does not prescribe a maximum interest rate are subject to Chapter 1204, Government Code (discussed below in Part D.4).

D. GENERAL LAW PROVISIONS

As noted in the introduction, in drafting the Public Securities Title (Title 9, Government Code), council staff eliminated many provisions of source law that duplicated or were superseded by general law. The drafter of a new statute authorizing public securities should attempt to avoid unnecessarily duplicating general law. The following paragraphs provide a basic outline of the most important provisions in the general public securities laws; a drafter should be fairly familiar with the general laws mentioned.

The general provisions usually have very broad definitions of "issuer" and "public security,"[28] which makes those provisions applicable by their own terms to most public securities. Thus, it is generally unnecessary to state that a particular general provision applies.

1. Public Security Procedures Act

The Public Security Procedures Act (Chapter 1201, Government Code) applies to almost any public security issued by a governmental entity or a nonprofit corporation acting on behalf of a governmental entity. Chapter 1201 provides an issuer with a great deal of discretion in prescribing the terms of a public security and permits the issuance of a public security in a variety of forms.[29]

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[26]See S.J.R. No. 6, Acts of the 67th Legislature, 2nd Called Session, 1982.

[27]See Braden et al., *The Constitution of the State of Texas: An Annotated and Comparative Analysis*, p. 299.

[28]See, e.g., Section 1201.002, Government Code.

[29]See Sections 1201.021–1201.024, Government Code.

Chapter 1201 also provides that a public security is a negotiable instrument, an investment security to which Chapter 8, Business & Commerce Code, applies, and an authorized investment for an insurance company, a fiduciary or trustee, or a sinking fund of a political subdivision or public agency of this state.[30]

2. Examination by Attorney General and Registration by Comptroller

Chapter 1202, Government Code, also applies to most public securities, including those issued by a nonprofit corporation acting on behalf of a governmental entity. Chapter 1202 requires an issuer to submit to the attorney general for review a public security the issuer proposes to issue and the record of the issuer's proceedings relating to the security.[31] If the attorney general finds that the public security has been authorized in conformity with law, the attorney general approves the public security and delivers to the comptroller a copy of the approval and the record of the issuer's proceedings.[32] On receipt of the approval and record of proceedings, the comptroller registers the public security.[33] On issuance, an approved and registered public security and any contract the proceeds of which are pledged to payment of the security are valid and incontestable.[34] A number of types of securities are exempt from approval and registration under Chapter 1202.[35]

3. Registrar for Public Security

Chapter 1203, Government Code, prescribes conditions applicable to the issuance of fully registrable public securities. A "fully registrable" public security is defined as one as to which the principal and interest are payable to the registered owner of the security, the principal is payable on presentation of the security, and the interest is payable to the registered owner at the most recent address of that owner as shown by the registrar's books.[36] Chapter 1203 permits several different persons to act as registrar, depending on who issues the public security.[37]

4. Interest Rate

Chapter 1204, Government Code, provides that a public security issued by a governmental entity or a nonprofit corporation acting on behalf of a governmental entity may not bear interest at a rate greater than a net effective interest rate of 15 percent.[38] This limitation does not apply to a public security for which the constitution prescribes the maximum interest rate.[39]

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[30]Section 1201.041, Government Code.

[31]Section 1202.003(a), Government Code.

[32]Section 1202.003(b), Government Code.

[33]Section 1202.005, Government Code.

[34]Section 1202.006, Government Code.

[35]Section 1202.007, Government Code.

[36]Section 1203.001(1), Government Code. Registered public securities are now issued in place of securities with attached interest coupons, on which interest is paid on surrender of the coupon. However, public securities with coupons are still permitted. See Section 1201.021(3), Government Code.

[37]Section 1203.021, Government Code.

[38]Section 1204.006, Government Code.

[39]See Revisor's Note (2) to Section 1204.002, Government Code.

5. Refunding Bonds

Chapter 1207, Government Code, authorizes the issuance of refunding bonds by any governmental entity that has the power to issue bonds. The refunding bonds may be issued to be sold, with the proceeds from the sale being used to retire the existing bonds (a procedure known as "advance refunding"),[40] or to be exchanged for the existing bonds (a procedure known as "exchange refunding").[41] There is often no need for the drafter of a new provision authorizing public securities to authorize the issuance of refunding bonds, but it may be necessary if the issuer is to be able to pledge any revenue to the refunding bonds[42] or if the issuer is to be authorized to issue both advance refunding bonds and exchange refunding bonds in a single issuance.[43]

6. Bonds as Authorized Investments

As noted in Part D.1, the Public Security Procedures Act (Chapter 1201, Government Code) provides that a public security is an authorized investment for an insurance company, a fiduciary or trustee, or a sinking fund of a political subdivision or public agency of this state.[44] Similarly, the Public Funds Investment Act (Chapter 2256, Government Code) provides that most obligations issued by the state or a political subdivision are authorized investments for many governmental entities.[45] Numerous other statutes and rules provide that public securities, or specified types of public securities, are authorized investments for certain entities.[46] Thus, it is usually unnecessary to list entities that may invest in a particular public security.

7. Provisions of Other General Laws Applying to Special Districts

In addition to being subject to the provisions of the Public Securities Title, special districts created by local law may be subject to similar provisions of other general laws. For example, water districts are generally subject to the provisions of the Water Code related to public securities.[47] A complete discussion of those provisions is outside the scope of this appendix, but a drafter of a special district local law should be aware of any applicable provisions.

E. PLACEMENT OF PUBLIC SECURITIES PROVISIONS

As noted in the introduction, many public securities provisions are in the Public Securities Title (Title 9, Government Code), while others are in other titles or codes. In general, a statute that has the issuance of public securities as its primary purpose should be placed in the Public Securities Title. A statute that has a broader primary purpose, for which the issuance of public securities is a method of accomplishing that purpose, should be placed in an appropriate code or chapter of the Revised Statutes.[48]

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[40]See Subchapters B and C, Chapter 1207, Government Code.

[41]See Subchapter D, Chapter 1207, Government Code.

[42]See Sections 1207.005 and 1207.0621, Government Code.

[43]See 1 T.A.C. Section 53.16 (attorney general will not approve mixed issuances of advance refunding bonds and exchange refunding bonds that are issued solely under Articles 717k and 717k-3, Vernon's Texas Civil Statutes [now Chapter 1207, Government Code]; such an issuance must have independent statutory authority).

[44]Section 1201.041, Government Code.

[45]Section 2256.009, Government Code.

[46]See, e.g., Section 34.101(d)(1), Finance Code (banks); Sections 63.002, 64.001, and 64.002, Finance Code, and 7 T.A.C. Section 65.21 (savings and loan associations); Section 93.001(c)(10), Finance Code, and 7 T.A.C. Section 77.71 (savings banks); Section 184.101, Finance Code (trust companies).

[47]See, for example, Section 49.183, Water Code (sale of bonds by certain water districts); Section 54.502(b), Water Code (maximum maturity of municipal utility district bonds).

[48]See, e.g., Chapters 254 and 303, Local Government Code; Chapter 54, Transportation Code.

Appendix 9

TEXAS LEGISLATIVE COUNCIL

P.O. Box 12128, Capitol Station
Austin, Texas 78711-2128
Telephone: 512/463-1151

DAVID DEWHURST
Lieutenant Governor
Joint Chair

TOM CRADDICK
Speaker of the House
Joint Chair

M E M O R A N D U M

FROM: Mark Brown
Legal Division Director

DATE: November 4, 2004

SUBJECT: Incorporation of Certain Statutes by Reference

INTRODUCTION

A legislative drafter sometimes will use a drafting technique known as incorporation by reference. By this technique, the drafter includes in a statute a reference to a second statute for the purpose of incorporating the terms or effects of the second statute into the first. The first statute is called the referencing statute, and the second statute is the referenced statute. Examples of incorporation by reference are:

> The penalty may be waived in situations in which penalties would be waived under Section 111.103, Tax Code.
>
> Except as provided by Section 551.126, Government Code, the board shall hold regular quarterly meetings in the city of Austin.
>
> Sec. 1.202. DEFINITION. In this subchapter, "fish farming" has the meaning assigned by Section 134.001, Agriculture Code.

This memorandum explains a change in the drafting policy of the Texas Legislative Council legal division regarding incorporation by reference. As part of that explanation, this memorandum discusses whether, when incorporating into a Texas statute a reference to a statute that was not enacted by the Texas Legislature, such as a federal statute, it is necessary to expressly incorporate the subsequent amendments of the referenced statute by adding to the referenced statute's citation the phrase "as amended" or "and its subsequent amendments."

BACKGROUND

The common law rules of statutory construction did not automatically incorporate subsequent amendments to referenced statutes. Instead, the common law rule differentiated between "specific" and "general" statutory references and limited the scope of incorporation for those statutes that were

"specifically" referenced to their content at the time of incorporation.[1] Thus, under the common law rule, a drafter who referenced a specific statute and who wished to include subsequent amendments to that statute would have needed to expressly incorporate the subsequent amendments to the referenced statute by including a phrase such as "as amended" or "and its subsequent amendments" with the statutory reference.[2]

In 1967, as part of the Code Construction Act, the Texas Legislature enacted a rule of statutory construction that reversed the common law rule and promoted a self-updating statutory operation for Texas codes, so that statutes would be considered to speak as of the time they are read. The new rule stated that "[u]nless expressly provided otherwise, a reference to any portion of a statute applies to all reenactments, revisions, or amendments of the statute."[3] Although the current version of that law, now found at Section 311.027, Government Code, is limited in application,[4] Section 312.008, Government Code, a similar statute enacted in 1993,[5] applies to "the construction of *all* civil statutes."[6]

Following the enactment of Section 312.008, the legislative council legal division changed its drafting policies in situations not governed by Section 311.027. In those situations, the legal division discontinued routine addition of "as amended" or "and its subsequent amendments" if the referenced statute was a Texas statute. Legislative council drafters continued to add one of the phrases, however, when the drafters wished to incorporate subsequent amendments to referenced federal statutes and the statutes of other jurisdictions. For example:

> A plan manager shall take all actions required to ensure that the plan qualifies as a qualified state tuition program under Section 529, Internal Revenue Code of 1986, as amended.

It is likely that this distinction between references to Texas statutes and references to the statutes of other jurisdictions prevailed because council drafters were unsure whether the rule of Sections 311.027 and 312.008 would apply to references to statutes of other jurisdictions. Regardless of the reasoning behind it, the distinction was included in the *Texas Legislative Council Drafting Manual*, under the heading "Adoption of definition by reference." The manual treated Sections 311.027 and 312.008 as applying only to references to "a *Texas* statute, rule, or regulation"[7] and provided that:

> Cross-references to federal statutes and statutes of other jurisdictions should include "as amended" or a similar reference to clearly convey the drafter's intent to adopt subsequent amendments of the referenced statute.[8]

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[1]The common law rule that incorporation by reference to specific law incorporates only the provisions referred to "at the time of adoption without subsequent amendments" is explained in Singer, *Sutherland Statutory Construction* Section 51.08, at 270 (6th ed. 2000).

[2]Reed Dickerson, *Legislative Drafting*, at 98 (reprint 1977) (1954).

[3]Sec. 1, Ch. 455, Acts 60th Leg., R.S., 1967.

[4]According to Section 311.002, Government Code, Chapter 311 applies only to those codes enacted by the 60th or a subsequent legislature as part of the state's continuing statutory revision program.

[5]Sec. 3, Ch. 131, Acts 73rd Leg., R.S., 1993.

[6]Sec. 312.001, Government Code (emphasis added).

[7]Sec. 3.07(i), *Texas Legislative Council Drafting Manual* (September 1998) (emphasis added).

[8]*Id*.

After several years of proceeding under this policy, attorneys on the legal staff have revisited the issue to reconsider the application of Sections 311.027 and 312.008, Government Code, to statutes of other jurisdictions and determine whether it is necessary or appropriate to add "as amended" or "and its subsequent amendments" when referencing statutes other than those enacted by the Texas Legislature.

DISCUSSION

Referenced Statute Includes Subsequent Amendments

The express wording of Sections 311.027 and 312.008, Government Code, does not clarify whether those sections apply to the subsequent amendments of referenced provisions that were not enacted by the Texas Legislature. The sections simply state:

> Sec. 311.027. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.
>
> Sec. 312.008. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute, rule, or regulation applies to all reenactments, revisions, or amendments of the statute, rule, or regulation.

The sections do not include a definition of the phrase "statute or rule" (the relevant phrase in Section 311.027) or "statute, rule, or regulation" (the relevant phrase in Section 312.008), and there are no other applicable statutes that define either of those phrases or any of their individual terms.

Left without a clear definition, one should first consider the rules of statutory construction prescribed by Sections 311.011 and 312.002, Government Code. Section 311.011 provides that words "shall be . . . construed according to . . . common usage." Section 312.002 states that "words shall be given their ordinary meaning." Courts have explained that, if a statute lacks clarity, courts must make "a true and fair interpretation of the written law . . . not forced or strained, but simply such as the words of the law in their plain sense fairly sanction and will clearly sustain."[9] With regard to the question of legislative intent, courts have similarly stated that one should first analyze any legislative intent that may be derived from the statute itself if a term is not defined in statute, because a court "must determine the meaning the legislature intended from the language it used"[10] and "proceed under the notion that what the legislature meant is best understood by the words it used."[11]

In Sections 311.027 and 312.008, Government Code, it seems that the relevant phrases "statute or rule" and "statute, rule, or regulation," given their ordinary meanings, would include a referenced "statute," "rule," or "regulation" that was not enacted by the Texas Legislature. Without some type

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[9]*Railroad Commission of Texas v. Miller*, 434 S.W.2d 670, 672 (Tex. 1968), citing *Texas Highway Commission v. El Paso Bldg. & Const. Trades Council*, 234 S.W.2d 857, 863 (Tex. 1950).

[10]*Beef Cattle Co. v. N.K. Parrish, Inc.*, 553 S.W.2d 220, 222 (Tex. Civ. App.--Amarillo 1977, no writ).

[11]*City of Amarillo v. Fenwick*, 19 S.W.3d 499, 501 (Tex. App.--Amarillo 2000, no pet.).

of limiting modifier, the most common meaning of the term "statute," "rule," or "regulation" would include any type of statute, rule, or regulation regardless of whether that provision was enacted by the Texas Legislature. Legislative intent regarding this issue appears unclear in Sections 311.027 and 312.008. While there is nothing in the sections to expressly indicate that legislators intended the relevant phrases to apply to provisions not enacted by the Texas Legislature, there is also nothing in the statutes to discourage that interpretation. Proceeding under the notion that what the legislature meant is best understood by the words it used, it appears that the legislature intended to include all types of statutes, rules, and regulations because the legislature did not use a limiting phrase such as "Texas" or "of this state" when referring to statutes, rules, and regulations. **For these reasons, it is now the reconsidered legal opinion of the Texas Legislative Council legal staff that Sections 311.027 and 312.008, Government Code, apply to any type of referenced statute, rule, or regulation, including referenced federal statutes and statutes enacted by other jurisdictions.** Accordingly, as a general rule, when a drafter incorporates by reference a statute, rule, or regulation not enacted by the Texas Legislature, such as a federal statute or a statute enacted by another state legislature, the drafter should not use language such as "as amended" or "and its subsequent amendments" to incorporate the subsequent amendments to the referenced statute, rule, or regulation. The subsequent amendments are considered to be incorporated merely by a citation to the referenced statute, rule, or regulation.

As a side note, a drafter should be aware that the issue of whether a referenced statute speaks as of the time the referencing statute is read or as of the time the referencing statute was enacted will in certain circumstances raise constitutional questions about whether an improper delegation of legislative powers has occurred. As discussed in *Ex parte Elliott*,[12] even in the face of an explicit reference to a federal statute "as amended," the limits on the authority of the legislature to delegate its authority may sometimes prevent subsequent amendments from being included in a statutory reference to a statute, rule, or regulation that was not enacted by the Texas Legislature, such as a federal statute. Drafters should be mindful of the issues involving improper delegation and proceed with caution when referencing provisions not enacted by the Texas Legislature. A later memorandum will discuss drafting techniques that take into account those issues.

Referenced Statute Does Not Include Subsequent Amendments

If a drafter wishes to incorporate into a statute the terms or effects of a second statute as those terms and effects exist on a particular date, the better practice is to restate in the first statute the relevant content of the second statute as that statute exists on the chosen date, rather than to reference the second statute.

An exception to this rule of drafting exists if the content of the second statute is lengthy. In that case, the drafter should not restate the content of the second statute but should instead reference the second statute and add with that reference the phrase "as it exists on (insert the particular date)." The date that should be used is a date occurring before the date of enactment of the new statutory reference.

[12]*Ex parte Elliott*, 973 S.W.2d 737 (Tex. App.--Austin 1998, pet. ref'd).

Appendix 10

LEGISLATIVE DRAFTING BIBLIOGRAPHY

Professional drafters and others with more than a passing interest in legislative drafting may wish to consult some of the following works on legal drafting. Call numbers are provided for works available in the State Law Library (SL) or Legislative Reference Library (LR).

Biskind, Elliott L. *Simplify Legal Writing.* 2nd ed. New York: Arco, 1975. Aimed at the general practitioner. Examines the style and ambiguities of certain examples and rewrites them in proper form. A large portion is devoted to suggestions for avoiding common errors in legal writing. (SL) KF 250 B5

Crawford, Earl T. *The Construction of Statutes.* Karachi, Pakistan: Pakistan Publishing House, 1975. Reprint of the 1940 edition. General discussion of certain foundational subjects of statutory law, including the nature and source of statutes and the legislative process. Contains a detailed treatment of the principles of statutory interpretation and construction. (SL) KF 425 C7

Darmstadter, Howard. *Hereof*, *Thereof*, *and Everywhereof: A Contrarian Guide to Legal Drafting*. Chicago: American Bar Association, Section of Business Law, 2002. A thorough and entertaining discussion of working toward clarity and brevity in legal drafting. Does not address legislative drafting but includes chapters on other types of legal documents as well as conventions and considerations applicable to legal drafting. (SL) KF 250 D37 2002

Dickerson, Reed. *The Fundamentals of Legal Drafting.* 2nd ed. Boston: Little, Brown and Company, 1986. An updated and expanded version of the 1965 edition. Aimed at legal drafting in general but also useful in legislative drafting. Considers substantive policy, construction, clarity, form, and style. New segments address "plain English" laws, computer aids, amendments, and verbal sexism. (SL) KF 250 D5 1989

Dickerson, Reed. *The Interpretation and Application of Statutes.* Boston: Little, Brown and Company, 1975. An analysis of how courts go about ascertaining the meaning of statutes, applying statutory law to specific cases, and, under the guise of statutory interpretation, using statutes as a springboard for judicial lawmaking. Of limited practical use for day-to-day drafting, but of great interest to anyone with a serious interest in statutory interpretation and the interaction between legislatures and courts. (LR) 340.11 D558; (SL) KF 425 D5

Dickerson, Reed. *Legislative Drafting.* Boston: Little, Brown and Company, 1954. The bible for legislative drafting. Primarily gives answers to everyday drafting problems. (LR) 328.373 D558

Dickerson, Reed. *Legislative Drafting.* Westport: Greenwood Press, 1977. Reprint of the 1954 edition. (SL) KF 4950 D5

Eskridge, William N., Jr., Philip P. Frickey, and Elizabeth Garret. *Cases and Materials on Legislation.* 3rd ed. St. Paul: West Group, 2001. A collection of materials for use in courses on legislation. Addresses public policy philosophy and the process of the creation, interpretation, and evolution of law. Contains a chapter on legislative drafting. (LR) 348.73 ES46C 2001

Filson, Lawrence E., and Sandra L. Strokoff. *The Legislative Drafter's Desk Reference*. 2nd ed. Washington, D.C.: CQ Press, 2008. An overview of legislative drafting concerns and considerations with an emphasis on federal statute construction. Provides statutory examples, case studies, and court decision citations to illustrate drafting principles. Also examines the dynamics between legislative and judicial branches in interpreting legislation. (LR) 328.373 F488 2008

Garner, Bryan A. *A Dictionary of Modern Legal Usage.* 2nd ed. New York: Oxford UP, 2001. A general reference work that provides definitions of legal terms and guidance on specific points of usage. (LR) 340.03 G186D; (SL) KF 156 G38 2001 (noncirculating reference)

Goldfarb, Ronald L., and James C. Raymond. *Clear Understandings.* New York: Random House, 1982. Demonstrates through anecdotes and examples problems common to legal writing and how to solve them. Does not address legislative drafting but is a readable and entertaining guide to improved legal expression in general. (SL) KF 250 G6

Haggard, Thomas R. *Legal Drafting in a Nutshell*. St. Paul: West Publishing Co., 1996. Addresses many facets of the legal drafting process, including style and usage, construction of definitions, contract drafting, and legislative drafting. (SL) KF 250 H3 1996

Mehlman, Maxwell J., and Edward G. Grossman. *Yale Legislative Services Handbook of Legislative Drafting.* New Haven: Yale Legislative Services, 1977. Designed to provide instruction in the basic techniques of legislative drafting for nonprofessional drafters. Divided into two main sections—one section concerns word choice and sentence structure and the other concerns the parts of a bill. (LR) 328.373 M474

Mellinkoff, David. *The Language of the Law.* Boston: Little, Brown and Company, 1963. Explores the history and usage of legal language. Well researched, understandable, and humorous. Not a guide for legal drafting but useful to improve writing and drafting skills. (SL) KF 250 M4

Mellinkoff, David. *Legal Writing: Sense and Nonsense.* New York: Charles Scribner's Sons, 1982. Provides lively instruction in ways to make legal documents more precise and readable. Does not deal specifically with legislative drafting. (SL) KF 250 M4s

Sutherland, Jabez G. *Statutes and Statutory Construction.* 6th ed. edited by Norman J. Singer. St. Paul: West Group, 2000. Discussion of legislative powers, constitutional regulations relative to the forms of legislation and to legislative procedure, together with an exposition at length of the principles of statutory interpretation and construction. (LR) 345.Su84s; (SL) KF 425 S3

Weihofen, Henry. *Legal Writing Style.* 2nd ed. St. Paul: West Publishing Co., 1980. Does not deal with legislative drafting but contains chapters on writing skills and construction of letters, opinions, memoranda, and briefs. (SL) KF 250 W4

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