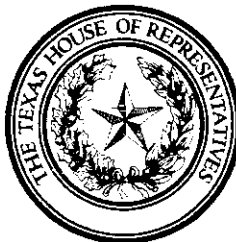


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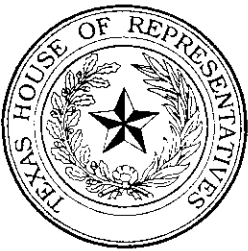
————— special legislative report —————

MAJOR ISSUES OF THE 72nd LEGISLATURE, REGULAR SESSION

December 18, 1991



Number 174



HOUSE RESEARCH ORGANIZATION

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Tom Whatley, Director

December 18, 1991

Number 174

MAJOR ISSUES OF THE 72nd LEGISLATURE, REGULAR SESSION

The 72nd Texas Legislature enacted 960 bills and adopted 11 joint resolutions during its regular session, after considering more than 4,500 proposals. This report summarizes some of the session's significant measures, both proposals that were enacted and some that failed to pass. Also included are some of the arguments offered for and against each measure and a brief legislative history.

This report offers an overview of many important issues considered during the regular session but is not a comprehensive list. Some key measures already have been summarized in other HRO reports on the 72nd Legislature. For instance, measures approved during the first and second called sessions — including the state lottery, criminal justice revisions and the agency reorganization bills — are summarized in HRO Special Legislative Report Number 173, *Summary of 1991 Special Session Legislation*, October 24, 1991.

The two constitutional amendments that were on the August 10 ballot are reviewed in Special Legislative Report Number 171, *1991 Constitutional Amendments, Part One*, July 8, 1991, and the 13 amendments that were on the November 5 ballot are reviewed in Special Legislative Report Number 172, *1991 Constitutional Amendments, Part Two*, September 19, 1991.

Vetoed bills are summarized in Special Legislative Report Number 170, *Vetoed of Legislation, 72nd Legislature*, June 28, 1991. HB 1, the General Appropriations Act for fiscal 1992-93, and HB 11, the omnibus revenue act, and other bills with fiscal implications are examined in HRO State Finance Report Number 72-4, *Fiscal 1992-93 Appropriations and Revenue*, October 18, 1991.

Handwritten signature of Anita Hill in black ink.

Anita Hill
Chairman

Handwritten signature of Henry Cuellar in black ink.

Henry Cuellar
Vice Chairman

Steering Committee:
Anita Hill, Chairman
Henry Cuellar, Vice Chairman

Tom Craddick
Renato Cuellar
Betty Denton

Harold Dutton
Bruce Gibson

Ernestine Glossbrenner
Libby Linebarger
Carolyn Park

Al Price
Jim Rudd

Sam Russell
Ashley Smith
Jack Vowell

72nd LEGISLATURE, REGULAR SESSION

	Introduced	Enacted*	Percent Enacted
House bills	2,906	528	18.5 %
Senate bills	<u>1,618</u>	<u>432</u>	26.7 %
TOTAL bills	4,524	960	21.2 %
HJR's	114	1	0.9 %
SJR's	46	10	25.0 %
TOTAL joint resolutions	160	11	6.9 %
* includes vetoed bills — 30 House bills, six Senate bills			

COMPARISON OF 1989 AND 1991 REGULAR SESSIONS

	1989	1991	Percent Change
Bills filed	5,069	4,524	- 10.8 %
Bills enacted	1,317	960	- 27.1 %
Bills vetoed	53	36	- 32.1 %
Joint resolutions filed	177	160	- 9.6 %
Joint resolutions adopted	22	11	- 50.0 %
Measures sent or transferred to Calendars Committee	1,173	929	- 20.8 %
Measures sent to Local and Consent Calendars Committee	996	897	- 9.9 %

Source: Legislative Information System (LIS)

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BUSINESS/ CONSUMER RELATIONS

Limiting liability for defective products

HB 5 by Seidlits, G. Lewis, et al.
Died in Senate committee

HB 5 would have limited the liability of manufacturers and sellers in products-liability actions under any legal theory or law, including negligence, strict liability and breach of warranty. It would have limited a seller's liability for defective products sold and set out the proof required to recover for defective product designs and marketing defects. It would have prohibited introduction of evidence of subsequent improvements, except to raise questions about the credibility of a witness. It would have restricted recovery for inherently harmful products and certain prescription drugs and medical devices. It would have provided for comparative damages and restricted exemplary damages (damages for willful and malicious conduct). It would have applied specific statutes of limitation for suits involving certain manufacturing equipment and aircraft. It would have permitted products-liability suits to be filed in the county where the product was purchased.

Supporters said the bill would clarify and bring order to scattered and arcane case law, codifying it into a single consistent and easily understood statute. The bill would carefully balance the rights of consumers genuinely hurt by defective products and those of innocent businesses forced to defend themselves against frivolous lawsuits.

Opponents said the bill would replace well-developed and balanced case law with a weapon that manufacturers of toxic chemicals, dangerous drugs and other hazardous products could use against consumers seeking compensation for injuries caused by defective products. It would allow sellers to shirk their responsibility to stand behind their products and discourage development of safe products.

Legislative History. The *House* State Affairs Committee added provisions to exclude from the definition of "seller" certain health-care providers; specify that government or agency-approved warnings must relate to the alleged harm in order to be considered adequate under a marketing-defect suit; include a reasonably foreseeable standard to the proof required for showing that intended users could have avoided harm by using a safer design; under proof of non-manufacturers' liability, reduce the required level of a non-manufacturer's warning or information from "exercise of substantial control over" to "failure to transmit" the warning or information; and specify that protection from liability provided to non-manufacturers would supplement their right of indemnity under a contract or any other law. The *House* added a floor amendment to invalidate a government warning in a marketing defect case if the claimant could prove that the seller withheld information from the government entity providing the warning. A floor amendment was added by nonrecord vote giving precedence to federal or state laws

regarding liability for environmental pollution. A proposed floor amendment, tabled by 80-69, would have excluded toxic-tort cases from the bill. A floor amendment, tabled by 86-59, would have deleted a provision shielding sellers from liability for unavoidably unsafe drugs and medical devices. A floor amendment, tabled by 100-46, would have deleted a provision applying a 20-year statute of limitations to suits against non-commercial aircraft manufacturers. The *House* then passed the bill to engrossment on March 27 by 111-36-1, and approved it on third reading by nonrecord vote, one member recorded voting nay, on April 2. The *Senate* Economic Development Committee took no final action on the bill.

The **HRO analysis** appeared in the March 27 *Daily Floor Report*.

DTPA exemption for professional services and arbitration

HB 6 by Uher, G. Lewis
Died in Senate committee

HB 6 would have exempted from the Deceptive Trade Practices Act (which permits consumers to sue for money damages, including treble damages in some cases, suffered due to deceptive business practices) claims arising from the negligent rendering of certain professional services. The act still would have applied to express representations made by professionals in advertisements. Parties could have agreed to resolve DTPA claims through arbitration.

Supporters said the bill would treat professionals fairly under the law, encourage economic development and protect the sanctity of contracts. Lawyers and other professionals who offer advice cannot absolutely predict outcomes and should not be expected to be guarantors of their work. The unjust application of the DTPA to professionals is driving them away from the state and hurting economic development.

Opponents said the bill would gut protections provided to consumers under the DTPA, granting certain professionals an open license to deceive the public. Because professional services such as legal advice and opinions are abstract and conceptual, consumers actually are more susceptible to deception by professionals, who have the advantage of their training and expertise.

Legislative History. The *House* added minor floor amendments, then passed the bill on May 10 by nonrecord vote, one member recorded voting nay and six members recorded present not voting. The *Senate* referred the bill to the Economic Development Committee, where no further action was taken.

The **HRO analysis** appeared in the May 9 *Daily Floor Report*.

Dismissing out-of-state lawsuits under *forum non conveniens*

HB 8 by McCollough
Died in Senate committee

HB 8 would have allowed Texas courts to dismiss a civil lawsuit under the doctrine of *forum non conveniens* upon a finding Texas was an inconvenient or inappropriate forum to try the lawsuit and that, in the interest of justice, the suit would be more properly heard out-of-state. The doctrine would not have been available in suits involving chronically toxic products, including their active ingredients, that were manufactured by the defendant in Texas.

Supporters said the bill would promote judicial efficiency, protect the rights of state litigants and encourage economic development by enacting a legal doctrine allowing Texas courts to dismiss suits more appropriately filed out-of-state. It would modify the *Alfaro* decision rendered by the Texas Supreme Court in 1990 that allowed defendants allegedly injured in Costa Rica to sue in Texas courts because the defendants had a Texas connection.

Opponents said the *forum non conveniens* doctrine barring lawsuits from being tried in Texas when the defendant has a clear connection to the state is bad public policy, judicially inefficient and outmoded. The law as currently interpreted allows an additional forum for defendants harmed by multinational corporations with Texas operations and provides an incentive for such corporations to act responsibly.

Legislative History. The *House* tabled amendments that would have allowed to be tried in Texas cases involving products that were illegal in the United States and chronically toxic products that were manufactured by a Texas corporation, and it added amendments to allow suits in Texas involving chronically toxic products that were manufactured in this state by the defendant, and suits in which a plaintiff, from the time the action accrued, was a Texas resident. The House then passed the bill by 131-10-1 on May 7. The *Senate* referred the bill to the State Affairs Committee, where no final action was taken.

The **HRO analysis** appeared in the May 6 *Daily Floor Report*.

Deficiency judgments on foreclosed property

HB 169 by Tallas
Effective April 1, 1991

HB 169 allows a judge or jury to limit the size of a deficiency judgment to the fair market value of foreclosed property on the day of its foreclosure sale. The bill also shortens the time in which lenders may seek deficiency judgments.

The deficiency on a borrower's debt is the difference between the fair market *value* and the amount owed on the mortgage loan, rather than the difference between the foreclosure-sale *price* and the amount owed. If the fair market value exceeds the sale price, the borrower receives a credit against the deficiency in an amount equaling the difference between the fair market value and the foreclosure-sale price.

Funds received by lenders from private mortgage insurance must be applied against the borrower's outstanding balance before the lender could sue for the deficiency. Any action to recover a deficiency must be brought within two years of the foreclosure sale.

Supporters said HB 169 would ensure that borrowers receive proper credit when their foreclosed property is sold and would protect them against large deficiency judgments. The bill represents a compromise between the lending and borrowing communities. Lenders often have been the sole bidders at foreclosure auctions and have bought foreclosed property at a price below fair market value. The lender then sells the property at a profit and then may sue the borrower for the "deficiency" between the low foreclosure-sale price and the loan balance. HB 169 would eliminate this double recovery and add fairness to the process.

Opponents said HB 169 would make it more difficult for lenders and others to collect deficiencies, increase the losses on lenders' real estate portfolios and possibly drive marginal lenders into insolvency. Financing for real estate ventures could become scarcer and more expensive in an already tight credit market. Speculators and developers could gain a windfall by creating a logjam of lawsuits. HB 169 should apply only to homeowners, small businesses or farmers; large commercial interests and developers will exploit and misuse it.

Legislative History. The *House* amended the bill and passed it by 115-4-11 on February 27. The *Senate* amended the bill twice and passed it on March 20 by 29-0-1. The *House* concurred with Senate amendments on March 25 by 114-10-6.

The **HRO analysis** appeared in the February 26 *Daily Floor Report*.

Creating limited liability companies, revising corporation laws

HB 278 by Wolens
Effective August 26, 1991

HB 278 provides a mechanism for creating limited liability companies, which allow members to incur no personal liability and thereby shield the company from federal corporate income taxes. The bill revises existing laws governing corporations, limited partnerships and professional corporations.

Supporters said the bill would promote economic growth and attract businesses to Texas by simplifying and modernizing the state's corporation laws. A business could choose to organize as a limited liability company, which provides certain tax advantages. The state's existing corporation laws, found in various statutes, would be made clear and more uniform, increasing incentives for businesses to incorporate in Texas.

Opponents favored restoring a provision deleted in committee that would have applied the same venue requirements to out-of-state and in-state corporations. Current law unjustly encourages forum shopping by plaintiffs.

Legislative History. After adding minor amendments, the *House* passed the bill on April 29 by nonrecord vote. The *Senate* passed the bill on May 20 by voice vote.

The **HRO analysis** appeared in the April 16 *Daily Floor Report*.

Creation of state savings banks

SB 836 by Dickson, O.H. Harris
Died on House floor

SB 836 would have permitted the creation of a new state-chartered financial institution — the savings bank. Savings banks would have had lending and investment powers similar to state-chartered savings and loan associations (S&Ls) and would have been regulated by the Texas Savings and Loan Department. Any state or federal bank or S&L could have converted to a state-chartered savings bank with the approval of the savings and loan commissioner.

Supporters said the bill would support the continued availability of housing loans in Texas by creating a new type of financial institution that would focus on housing-related investments. Savings banks would operate under a less burdensome regulatory structure than state-chartered S&Ls, which without this lighter burden are likely to convert to federal charters. Other states that have created state savings banks still have strong S&L industries, indicating that the motivation behind the bill is the regulatory costs, not a desire to evade investment limitations.

Opponents said the bill would create a new type of financial institution not subject to adequate regulatory controls, which could set the stage for a repeat of the S&L catastrophe. The Texas Savings and Loan Department would not have the staff necessary to fully monitor savings banks, which would have been permitted to make risky real estate investments and charge usurious fees.

Legislative History. The *Senate* passed the bill on May 21 by 29-1. The bill passed the *House* on second reading on May 24 by nonrecord vote, two members recorded voting nay, but failed to pass on third reading on May 25 by 44-88-3.

The **HRO analysis** of the companion bill, HB 1102 by Tallas et al., appeared in the May 21 *Daily Floor Report*.

Regulation of telephone solicitations

SB 1169 by Leedom
Effective January 1, 1992

SB 1169 regulates telephone solicitations made to private residences to sell consumer goods or services, including calls made by an automatic dialing device. Calls may be made only between 9 a.m. and 9 p.m. Monday through Saturday and noon until 9 p.m. on Sundays. Automatic dialing devices must disconnect within 30 seconds after the call is terminated, if technically possible. Solicitors must identify themselves and the purpose of the call immediately. Solicitors may not charge goods or services to a consumer credit card unless they permit a full refund for returned undamaged or unused goods or canceled services within 30 days. Solicitors must implement procedures for avoiding calls to persons who have asked not to be called. The attorney general may obtain a restraining order to restrain a continuing violation and assess a civil penalty of up to \$10,000 for each violation.

Supporters said the bill represents a compromise agreement that meets consumers' concerns and those of the telemarketing industry. It would help protect credit card users who make impulsive purchases over the phone from solicitors who use high pressure tactics to talk consumers into items they do not really need or want.

Opponents said the bill does not go far enough to protect consumers -- it should require telemarketers to register with the state and have a permit to do business.

Legislative History. The *Senate* passed SB 1169 by voice vote on April 26. The *House* amended the bill, then passed it by nonrecord vote on May 20. The *Senate* concurred with the House amendments on May 24.

The **HRO analysis** of the companion bill, HB 2527 by A. Hill, appeared in the May 17 *Daily Floor Report*.

Regulation of automatic dial announcing devices

SB 1262 by O.H. Harris
Effective September 1, 1991

SB 1262 requires anyone using an "automated dial answering device" (ADAD) to acquire a permit and authorizes the Public Utility Commission (PUC) to regulate ADAD operations. (An ADAD is automatic telephone equipment often used for telephone solicitation or collection.) The ADAD message must state the nature of the call, the identity of the caller and the telephone number from which the call is made within 30 seconds. The ADAD call must disconnect within 30 seconds after the called party hangs up. If an ADAD call promotes a pay-per-call information service, the announcement must state that a charge will be made for the call, the amount of the charge and the amount of time it takes to receive the information.

Supporters said the bill would allow the PUC to regulate ADADs in way that represents a compromise agreement between the interests of consumers and telemarketing companies. Consumers should not be harassed by ADADs that will not disconnect and that tie up telephone lines that may be needed in an emergency.

No apparent opposition

Legislative History. The *Senate* passed SB 1262 by 30-0 on May 1. The *House* passed the Senate version of the bill by nonrecord vote on May 22.

The **HRO analysis** of the companion bill, HB 2526 by A. Hill, appeared in the May 16 *Daily Floor Report*.

Barring discrimination in contractual relationships

SB 1316 by Barrientos
Died in House Calendars Committee

SB 1316 would have provided a state-court remedy for a discriminatory act that affected the enjoyment of the benefits, privileges, terms and conditions of a contractual relationship. A person or entity could not have discriminated on the basis of race, color, disability, religion, sex, national origin or age. A prevailing plaintiff would have been entitled to reasonable attorney fees.

Supporters said the bill would provide a consistent prohibition against racial and other discrimination by closing a loophole in federal law that permits discrimination on the job while prohibiting discrimination in hiring. The bill would allow victims of discrimination to have their case heard in state court, rather than federal court. It would provide broader protection than currently offered by the Texas Commission on Human Rights Act by prohibiting employment discrimination regardless of the number of employees, giving full monetary relief, rather than only recovery of lost wages, and permitting immediate filing of a suit, without a lengthy administrative procedure.

Opponents said the bill would extend government interference in private business decisions. Victims of discrimination can seek relief under the federal Civil Rights Act and other federal statutes, as well as through the federal Equal Employment Opportunity Commission and the Texas Human Rights Commission. These remedies are adequate to prevent racial and other discrimination without new statutory intrusion into citizens' private lives.

Legislative History. The *Senate* passed the bill on May 10 by 25-0. The *House* State Affairs Committee reported the bill favorably, without amendment, on May 20 and sent the bill to the Calendars Committee, where no further action was taken.

COURTS

Reorganizing the county courts at law

HB 66 by S. Thompson
Effective October 1, 1991

HB 66 changes the jurisdiction, salaries and fees of county courts at law and allows the creation of county courts of law to serve more than one county. The bill sets a uniform monetary jurisdictional limit for county courts of law at \$100,000. (The previous monetary jurisdictional limit varied among courts, with many set at \$5,000, but some as high as \$100,000.) The bill also sets uniform jurisdiction over appeals from decisions of the Workers Compensation Commission and over probate matters in counties lacking a special probate court. The bill also sets out uniform qualifications for county court at law judges. While the bill allows the creation of county courts with jurisdiction over more than one county, it does not create any such courts.

The bill requires an additional \$20 filing fee in civil cases and an additional \$10 fee from people convicted in criminal cases, with certain exceptions. County court-at-law judges are to receive a uniform minimum salary of \$1,000 less than that of the lowest paid district judge in the county, with certain exceptions, and the state is to provide \$25,000 per judge each year for salary payments from the additional fees collected. Any year when the amount of fees collected exceeds total salary payments, the extra amount will be remitted to the counties based on the proportion of total fees that each county had paid.

Supporters said the jurisdiction of Texas county courts of law is a complicated and confusing patchwork. They argued that increasing the jurisdiction of the county courts at law would relieve some of the overwhelming burden on district courts. They said increased salaries were needed, especially given the increased workload, and that increased fees were the only way to fund the salaries without tapping general revenue. The fees would still be lower than the fees in district courts. It is important to set a framework for multi-county courts of law, so that counties with populations too small to support a county court at law by themselves could pool their resources and share a court.

Opponents criticized the precedent of having the state set a salary that the counties would have to pay, and argued that different workloads, prevailing wages, and costs of living made uniform salaries inappropriate. Opponents also worried that court fees are already too high, and that increasing them would discourage defendants from using driver education programs and deferred adjudication rather than seeking acquittal at an expensive, time-consuming trial and would reduce the amount of fines that could be collected.

Legislative History. After approving several amendments, including to delete salary and fee provisions, the *House* passed the bill on March 26 by nonrecord vote, eight member recorded voting nay. The *Senate* added provisions for salaries and fees and passed the bill on May 17 by voice vote. The *House* refused to concur with the Senate amendments, and a conference committee was appointed. Both houses adopted the conference report on May 27.

The **HRO analysis** appeared in the February 27 *Daily Floor Report*.

A

Allowing a witness's attorney in the grand jury room

HB 765 by S. Thompson
Died on the Senate floor

HB 765, as filed, would have allowed the attorney for a witness called before a grand jury to accompany the witness into the grand jury room. It also would have provided for punishment of any disclosure of secret grand jury proceedings.

Supporters said current law allows a witness to leave the grand jury room to consult with an attorney after any question or after each question. The difference between current procedure and the proposed one is merely a matter of efficiency and of allowing a witness to be fully advised by an attorney. The only disadvantage of the bill for prosecutors would be to make it more difficult to trick or pressure the witness into abandoning constitutional rights.

Opponents said the bill would only make it more difficult to get complete and truthful testimony from witnesses before a grand jury and that the bill was an effort to exact revenge for recent grand jury investigations of state officials.

Legislative History. The *House* considered a substitute that provided for recording of testimony, Class B misdemeanor punishment for disclosure of grand jury secret proceedings, provisions for sealed indictments and records, and provisions for a grand juror to disclose conflicts of interest, then passed the bill by nonrecord vote, 11 members recorded voting nay. The *Senate* Criminal Justice Committee reported a complete substitute that only addressed the right of a witness to have an attorney present to consult. After passing the bill on second reading, the Senate did not suspend the rules to consider the bill on third reading on May 26 by 17-14.

The **HRO analysis** appeared in the March 13 *Daily Floor Report*.

Single-member districts and retention elections for appeals judges

HB 700 by H. Cuellar, et al.
Died in Senate committee

HB 700 would have changed the method of electing members of the 14 courts of appeal. Each court of appeals district would have been divided into single-member subdistricts or "places." The number of places within each district would have coincided with the number of appeals court justices provided by statute for the district. New appeals court judges would have initially been elected to a six-year term in a partisan election by place (subdistrict). At the end of their first term, judges would have gone before the voters in a non-partisan, districtwide "retention" election. In that election, justices would not have faced an opponent; the citizens of the district would have voted for or against retaining them for another six-year term. If a judge were retained, the election cycle would have begun again six years later, with a partisan election by place. Subsequent elections would have alternated between districtwide retention elections and partisan elections by place. If a judge were not retained, a vacancy would have existed in the office. The governor would have filled the vacancy, and the appointee would have had to run in the next general election in a partisan election by place. Judges who were not retained would have been eligible for appointment or election to the office. Vacancies in the office of chief justice would have been filled by the most senior justice.

Supporters said the bill represented a bipartisan compromise to enhance accountability of courts of appeal to local constituencies while allowing the justices to carry out their duties impartially. Minority communities have not been represented on the bench. Single-member places would make the state's appeals courts more representative of all Texans and provide more equal access to the judicial selection process. The bill contained the best features of the two competing philosophies: elected v. appointed. Subdistrict or "place" elections would have given communities the chance to choose judges in a multi-candidate, partisan election. At the same time, retention elections every other term would have allowed judges more autonomy from partisan politics. The judicial selection system is under challenge in federal court, and HB 700 would allow the Legislature, rather than the courts, to change the system for electing appeal court judges.

Opponents said a judicial selection system based on minority quotas would not improve the courts. Judges, particularly appellate judges, should interpret the law impartially and not have to kowtow to narrow political interests. Subdistricts would compound judicial partisanship with ward politics. Judges are supposed to be above politics. Unopposed retention elections would only insulate judges further from public opinion. The state may prevail in the federal court lawsuit challenging the judicial election system, making the proposed change unnecessary.

Legislative History. The *House* adopted an amendment to remove the provision allowing retention election every other cycle, after a motion to table the amendment failed by 59-82-1 on May 6, then passed the amended version of the bill by 84-64-1 on May 7. The *Senate* Jurisprudence Committee took no final action the bill.

The **HRO analysis** appeared in the May 6 *Daily Floor Report*.

Court fee on felony and misdemeanor offenders

HB 1492 by de la Garza
Died in conference committee

HB 1492, as passed by the House, would have imposed a court fee of \$100 on a convicted felon and \$50 on a person convicted of a class A or class B misdemeanor. The money would have been deposited in the General Revenue Fund by county treasurers, who could have kept 10 percent as a service fee.

Supporters said the fees would constitute a "user fee" imposed on criminals to help offset the cost of building and maintaining prisons.

Opponents said the fees assessed against persons convicted of crimes are high enough. This bill would more than double court fees assessed on felony offenders and increase misdemeanor court fees by one-third. Many criminal offenders are indigent and cannot afford to pay even the current fees.

Legislative History. The *House* passed the bill by nonrecord vote on May 8. The *Senate* amended the bill to increase the state payment to survivors of law enforcement officers who are killed in the line of duty from \$20,000 to \$50,000 and allow surviving spouses and dependents access to health insurance plans, then passed the bill by voice vote on May 22. The *House* voted not to concur with the Senate amendments, and a conference committee was appointed. A conference committee report was filed on May 27 that would have set the fees as \$5 and \$3, but on the same day the *Senate* discharged its conferees and appointed new ones; the conference committee took no further action on the bill.

The **HRO analysis** appeared in the May 7 *Daily Floor Report*.

Note. During the first called session, the Legislature enacted HB 11, the omnibus revenue bill, which included a provision adding a court cost of \$2.50 for persons convicted of a misdemeanor offense, other than a parking or jaywalking offense, and a court cost of \$30 for persons convicted of driving while intoxicated. The money will be deposited in the General Revenue Fund, but local governments are allowed to retain a 10 percent collection fee.

Raising the state's share of district and appellate judge salaries

HB 1747 by Rudd
Effective September 1, 1993

HB 1747 increases the state share of the salaries paid state district judges and justices of the courts of appeals. The state share of the maximum salary for district judges increases from 85.5 percent to 90 percent of the salary of a Supreme Court justice. (The Supreme Court justice salary in fiscal 1992-93 is set at \$91,035 a year.) The state portion of an appellate justice's salary is 95 percent instead of 90 percent of the salary of a Supreme Court justice. The increase was to take effect on or before September 1, 1993, upon certification of available funds by the comptroller. (HB 1, the General Appropriations Act for fiscal 1992-93, which took effect September 1, 1991, reflects the salaries provided for in HB 1747; the comptroller certified that there was sufficient revenue to cover the cost of the bill.)

Supporters said district and appellate judges are state judges and for purposes of uniformity should be paid primarily by the state, not the counties. Judges need higher pay to ensure that the best legal talent stays on the bench. If the state assumes a larger share of state judge's salaries, counties might be more willing to raise the salary supplement for district judges in their counties to the maximum allowable level.

Opponents said the state is in a fiscal crunch and should not make such an added financial commitment. Any increase in the state share of the salary of district judges means an automatic increase in legislative pension benefits, which are tied to district judge salaries and should be evaluated in that light.

Legislative History. The *House* passed HB 1747 by nonrecord vote on May 17. The *Senate* passed the bill by voice vote on May 25.

The **HRO analysis** of the bill appeared in the May 17 *Daily Floor Report*.

Driver's license list for jury selection

SB 52 by Green
Effective January 1, 1992

SB 52 will expand the list of potential jurors in all Texas counties to include the names of Texas driver's license and identification card holders in addition to registered voters. The Secretary of State's Office will use the Department of Public Safety's list of driver's license and identification card holders and the counties' voter registration lists to eliminate duplicate names and to produce a certified list of potential jurors for each county. The names of convicted felons and others not eligible for jury duty will not be included on the official lists. The bill also increases the penalty for avoiding a jury summons and imposes penalties on employers who fire employees missing work to serve on a jury.

Supporters said the bill would significantly increase jury pools and permit a wider population representation. It would catch citizens who fail to register to vote in order to avoid jury selection, which could boost voter registration.

Opponents said the bill would bring non-voters, lacking a sense of civic duty, into the jury selection process. Instead of mandating use of driver's license lists statewide, allowing counties to use the list as a local option would put no extra burden on the government and eliminate potential juror shortages only when necessary.

Legislative History. The *Senate* passed the bill by voice vote, one member recorded voting nay, on March 4. The *House* adopted a committee substitute that exempted caretakers of invalids from jury service, then passed the bill by nonrecord vote, one member recorded voting nay, on May 17. The *Senate* concurred with the House amendments by nonrecord vote on May 24.

The **HRO analysis** appeared in the May 16 *Daily Floor Report*.

CRIMINAL JUSTICE

Punishment and procedures in capital murder cases

HB 9 by McCollough
Effective September 1, 1991

HB 9 creates an alternative sentence of life imprisonment in capital felony cases and grants the prosecution the option of seeking the alternative punishment rather than the death penalty. It defines life imprisonment as 35 calendar years, with no allowance for good conduct time, before eligibility for parole. The life imprisonment punishment applies to a guilty offender if the prosecution does not seek the death penalty or if the death penalty is sought and the jury decides not to impose it. When the prosecution does not seek the death penalty for a capital felony, the defendant may waive a jury trial, if the prosecution agrees. HB 9 limits certain procedures for capital felonies, such as extra numbers of peremptory strikes of potential jurors, to cases in which the prosecutor is seeking the death penalty. HB 9 also prohibits Texas authorities from receiving from another state for supervision in Texas a person on probation or parole for a capital offense.

Supporters said HB 9 was a compromise between prosecutors and defense counsel that both sides supported. An offender who serves 35 years of flat time is unlikely to be a further threat to society. A sentence that keeps offenders behind bars for most of their adult life is far from a lenient punishment, but prosecutors still would retain the option of seeking the death penalty when appropriate.

Opponents said that there should be a geriatric exception to the requirement of serving 35 years without the possibility of earlier release. Those who already are middle-aged or elderly when they begin their sentence are unlikely to be any danger to society after 10 or 20 years in prison if they are aged or infirm; at that point they are occupying prison space that could better be used to hold dangerous offenders. Other Opponents said that allowing a 35-year sentence as an alternative might make it more difficult to obtain the death penalty in cases in which it is justified; the alternative punishment should at least be life without parole.

Legislative History. The *House* accepted a complete substitute, then passed the bill May 7 by voice vote, one member recorded voting nay. The *Senate* amended the bill to provide for life without parole, to add murdering a child under six years old as a capital offense and to prohibit Texas authorities from accepting capital offense parolees from other states for supervision in Texas or from sending Texas capital offense parolees to other states, then passed the bill by voice vote, two members recorded voting nay, on May 24. The *House* refused to concur with the Senate amendments on May 25. The conference committee adopted the life imprisonment provision but limited it to 35 years

flat time and deleted the provisions regarding the killing of a child and the prohibition on sending Texas parolees to other states. Both houses adopted the conference report on May 27.

The **HRO analysis** appeared in the May 6 *Daily Floor Report*.

Deleting the spousal exemption for sexual assault

HB 263 by Danburg
Effective September 1, 1991

HB 263 deleted the exemption for spouses from prosecution for sexual assault, substituting a provision that the prosecution of a spouse for sexual assault must show bodily injury or the threat of bodily injury. (Under previous law, a spouse could not be prosecuted for sexual assault, but could be prosecuted for aggravated sexual assault if there were *serious* bodily injury or threat of serious bodily injury.)

Supporters said a wife should have the right to refuse sexual relations with her husband, and that in most spousal rape cases, there is no question at all about the lack of consent. Supporters said spousal rape cases are often among the most vicious and terrifying cases because the husband is trying to hurt and scare the wife.

Opponents said cases in which the spouse caused any kind of serious bodily injury or threatened to do so are already covered under the aggravated sexual assault statute, and that cases in which the spouses are separated or in the process of divorce are not subject to the spousal exemption. When there was not even a threat of serious bodily injury and the spouses were living together, determining whether the alleged victim consented would be very difficult in many cases. Opponents also said false allegations of sexual assault would be used as a tactic for subsequent divorce proceedings.

Legislative History. The *House* passed the bill on May 15 by nonrecord vote, four members recorded voting nay. The *Senate* amended the bill to require proof of bodily harm or threat of bodily harm in order to prosecute a spouse, then passed the bill by voice vote on May 23. The conference committee report was adopted by both houses on May 27.

The **HRO analysis** appeared in the May 9 *Daily Floor Report*.

Expanding allowable use of deadly force in self defense

HB 330 by Repp, et al.
Died in the Senate

HB 330, as reported from committee in the House and Senate, would have removed the "requirement of retreat" from the definition of permissible use of deadly force in self-defense or in defense of a third party. (The provision that would have been deleted requires that the actor retreat if a reasonable person in the actor's situation would have done so.) The bill also exempted persons from any civil liability for using deadly force allowable under the Penal Code.

Supporters said several people who had defended themselves against intruders in their homes had faced criminal or civil liability or both. No one should be expected to retreat from intruders at home or be civilly liable for injuries inflicted in self-defense.

Opponents said the requirement of retreat applies to many situations outside the home in which there is no intruder. The bill would provide a defense in many situations in which the actor could easily have avoided any need for violence.

Legislative History. As introduced, HB 330 would have eliminated the "requirement of retreat" for justifiable use of deadly force in cases of unlawful entry into a person's habitation. The House Criminal Justice Committee approved a substitute to eliminate the requirement of retreat in all cases. The *House* amended the bill to restore the requirement of retreat, leaving only an exemption from civil liability for use of deadly force, then passed it on April 16 by nonrecord vote, three members recorded voting nay and one voting yea. The *Senate* Jurisprudence Committee on May 14 reported favorably a committee substitute that restored the provision eliminating the "requirement of retreat"; the Senate took no further action on the bill.

The **HRO analysis** appeared in the April 16 *Daily Floor Report*.

Enhanced punishment for repeat family-violence offenses

HB 391 by Cain
Effective September 1, 1991

HB 391 increased the penalty for repetition of certain family-violence offenses from a class A misdemeanor (maximum penalty of one year in jail and a \$3,000 fine) to a third-degree felony (maximum penalty of 10 years in prison and a \$10,000 fine). The augmented penalty applies to the third or subsequent offense of assault on a family member that causes bodily harm or a third or subsequent offense of violating a court protective order. HB 391 amended the required warnings on protective orders to reflect the possibility of felony punishments for violations of an order.

Supporters said under current law no matter how many times an offender commits assault or violates a protective order, the punishment is the same. Some people are not deterred by the threat of class A misdemeanor punishment. In Dallas some offenders have been charged and convicted of family-violence offenses as many as six times in six months. This bill would give police, judges and victims a tool to use against repeat offenders.

Opponents said if the class A misdemeanor penalty fails to deter people from committing six offenses in six months, it is because the penalty is not being used. If the maximum penalty were imposed for subsequent offenses, the offender would be sent to jail for up to one year. The real problem is that there is not enough jail space to allow even one-year sentences. This bill would only cause more overcrowding in the prisons.

Legislative History. The *House* passed the bill on April 10 by nonrecord vote. The *Senate* passed the bill by voice vote on May 17.

The **HRO analysis** appeared in the April 9 *Daily Floor Report*.

Increased fines for misdemeanors

HB 407 by Ovard
Effective September 1, 1991

HB 407 increased the maximum fines for misdemeanor offenses. The maximum fine for a class C misdemeanor increased from \$200 to \$500. The maximum fine for a class B misdemeanor increased from \$1,000 to \$1,500, and for class A misdemeanors, from \$2,000 to \$3,000.

Supporters said this increase was long overdue and would not even keep up with inflation. Higher fines are a way of increasing the punishment for crimes without exacerbating jail overcrowding.

Opponents said the bill would hurt small businesses since code violations are often class C misdemeanors and that if fines increase too much, it would lead more people to go to trial rather than pleading guilty and paying the fine.

Legislative History. The *House* passed the bill on April 4 by nonrecord vote. The *Senate* passed the bill on May 2 by voice vote, one member recorded voting nay.

The **HRO analysis** appeared in the April 3 *Daily Floor Report*.

Increased penalties for offenses by street gangs

HB 549 by Gallegos, et al.
Effective September 1, 1991

HB 549 increases the penalty for numerous criminal offenses if they are committed as the act of a criminal street gang (unless the offense already is a first degree felony). It adds the criminal street gang provisions to the current provisions regarding organized crime. The bill also allows for the sentence to include time in jail and public service as a condition of probation.

Supporters said Texas has a huge problem with criminal activity by street gangs in major cities and even in some rural areas. Police need a legal definition of a criminal street gang and increased penalties to deal with this specific problem.

Opponents said offenders should be punished solely for what they do, not for their associates. The bill would be hard to apply and defend on appeal because of nebulous definitions.

Legislative History. The *House* amended the bill to allow forfeiture of a vehicle used in an offense, then passed the bill on May 2 by nonrecord vote. The *Senate* by voice vote on May 25 adopted a complete substitute that placed the criminal provisions in the same section as provisions for organized crime and allows jail and community service to be a condition of probation. A conference report, following the Senate bill's provisions, was adopted by both houses on May 27.

The **HRO analysis** appeared in the April 29 *Daily Floor Report*.

Returned-check fee

HB 703 by Van de Putte
Effective September 1, 1991

HB 703 raised from \$15 to \$25 the maximum processing fee charged by holders of dishonored checks. The bill grants collection authority to check holders, county attorneys, district attorneys and criminal district attorneys who collect other fees from defendants, and to justices of the peace in whose courts a defendant is convicted for issuing a dishonored check.

Supporters said the bill would clamp down on bad-check writers and give businesses and others a fair return for trying to collect on bad checks.

Opponents said the current cap on returned-check fees is adequate. If the existing criminal penalties for bad-check writers do not deter the crime, raising the fee would have little effect.

Legislative History. The *House* tabled an amendment that would have limited the fee to the actual cost of collecting the amount of the dishonored check, up to \$25, then approved the bill by nonrecord vote, three members recorded voting nay. The *Senate* added justices of the peace as authorized collectors and also added a provision prohibiting a holder of a dishonored check from collecting a fee that had already been collected by another authorized person, then approved the bill by voice vote on May 22, one member recorded voting nay. The *House* concurred with the *Senate* amendments by nonrecord vote on May 24.

The **HRO analysis** appeared in the May 2 *Daily Floor Report*.

Creating an offense for hate crimes

HB 1568 by Colbert
Died in Calendars Committee

HB 1568 would have classified certain crimes against people in "disfavored" groups or against their property as "hate crimes" and made them subject to special penalties. "Disfavored groups" were defined as those against which a history of violence exists and about which pervasive and well-known stereotypes exist. The crimes would have included murder, false imprisonment, kidnapping, aggravated kidnapping, assault, sexual assault, aggravated assault, aggravated sexual assault, harassment, arson, criminal mischief, criminal trespass and desecration of venerated objects. The hate-crime offense would have been a misdemeanor or felony one degree higher than the underlying offense, except in the case of first-degree felonies. The bill also would have created a civil remedy for hate-crime victims to recover actual damages, punitive damages and reasonable attorney's fees.

A division within the Texas Department of Public Safety would have been required to maintain a central repository for collecting information relating to crimes motivated by bigotry and bias.

The Texas Board of Criminal Justice would have been required to prohibit prison inmates from receiving publications that could threaten security by appealing to hatred of a disfavored group.

Supporters said that establishing a new category of criminal offense is necessary to halt increasing violence against certain groups and their community centers and religious buildings, such as synagogues and mosques. The bill would reaffirm the concept of freedom and the right to practice one's religion in peace.

Opponents said it would be difficult to prove crimes were motivated by hate, making prosecutions unlikely. Basing enhanced criminal penalties on political beliefs, however odious, could run afoul of First Amendment freedoms that protect political expression regardless of its content.

Legislative History. The *House* Criminal Jurisprudence Committee added aggravated kidnapping, aggravated assault, aggravated sexual assault, and arson to the list of underlying crimes resulting in a hate-crime offense, and made other changes. The committee favorably reported the bill on May 8 to the *House* Calendars Committee, where no further action was taken.

Note. During the second called session, the Legislature enacted HB 93 by Hightower and Stiles, criminal justice revisions, which requires the Department of Public Safety bureau of identification and records to establish a central repository to collect and analyze information about crimes motivated by prejudice, hatred or the advocacy of violence, including an annual report to the governor and the Legislature.

Raising theft and misapplication-of-property penalties

SB 4 by Montford, Parker, et al.
Effective September 1, 1991

SB 4 raised the penalties for certain property crimes. Instead of tying the punishment to the type of stolen property, SB 4 made theft and misapplication of fiduciary property (property held by a trustee or guardian) or property of a financial institution a first-degree felony (maximum penalty of 99 years in prison and a \$10,000 fine) if the property is \$100,000 or more. Tampering with or fabricating physical evidence was raised from a class A misdemeanor, maximum penalty of one year in jail and a \$3,000 fine, to a third-degree felony, maximum penalty of 10 years in prison and a \$10,000 fine.

The statute of limitations for felony indictments for nonaggravated offenses of misapplication of fiduciary property was extended from three years to seven years from the date the offense.

The bill raises the penalties for certain securities-fraud offenses. For offenses less than \$10,000, the maximum fine was raised from \$5,000 to \$10,000. For offenses over \$100,000, the maximum penalty was raised from 2 to 20 years in prison and a \$10,000 fine, to 5 to 99 years to life in prison and a \$10,000 fine. The bill allows amounts involved in securities-fraud offenses to be aggregated when the amounts are obtained under one scheme or continuing course of conduct, regardless of the source.

The bill clarified that under the theft-of-service law, intent to avoid payment includes returning rental property after expiration of a rental agreement and failing to pay applicable charges.

The bill amended various provisions in the laws on bribery, corrupt influence and tampering with governmental records. It also clarified that in establishing venue for prosecution, any act subject to regulation by the State Board of Insurance is considered being engaged in the insurance business.

Supporters said the recent rise in embezzlement and other "white-collar" crimes at financial institutions and at stock exchanges warranted stiffer penalties.

No apparent opposition

Legislative History. The *Senate* passed the bill April 24 by voice vote. The *House* added various amendments and passed the bill on the Consent Calendar on May 17 by nonrecord vote. The *Senate* concurred with the *House* amendments by nonrecord vote on May 23.

Making murder of a child a capital offense

SB 10 by Brown
Died in Calendars Committee

SB 10 would have made murder of a child under age six a capital offense, punishable by lethal injection or life imprisonment, if the defendant knew the child was under age six.

Supporters said murdering a young child is a particularly heinous crime and should be penalized harshly. Children are defenseless and completely dependent on others, so they deserve the strongest deterrent against harm.

Opponents said the state should not extend its use of ritualized killing, an uncivilized and ineffective punishment. Other opponents said the punishment also should apply to the murder of elderly people.

Legislative History. The *Senate* bill, which would apply to child victims under age 10, passed by voice vote on March 7. The *House* Criminal Jurisprudence Committee amended the bill to lower the victim's age to under six years and add the requirement that the defendant know the child victim's age, then on April 30 reported the bill to the House Calendars Committee, which took no further action on the bill.

Admission of evidence of family violence by victim

SB 275 by Johnson
Effective September 1, 1991

SB 275 allows evidence to be presented in certain murder or manslaughter trials that the defendant had been a victim of family violence committed by the deceased. SB 275 permits family-violence experts to testify on relevant facts and circumstances relating to family violence and regarding the condition of the defendant's state of mind at the time of the murder. Such evidence may be used when a defendant is offering a defense involving self-defense or defense of a third party.

Supporters said some courts do not allow family-violence victims to tell their full story in court, an omission that compounds years of abuse at home with abuse at the hands of the criminal justice system. SB 275 ensures that judges and juries will know relevant background information in murder cases in which family violence played a role.

Opponents said current law already allows testimony about prior acts by the victim to be admitted as evidence in criminal trials in appropriate cases. SB 275 would dilute the discretion of the courts by forcing judges to allow such evidence in all cases, regardless of its relevance or justification. It would also unnecessarily broaden the admissibility of expert testimony on battered person syndrome, which is of questionable validity as a defense to murder.

Legislative History. The *Senate* passed the bill by voice vote on March 3. The *House* approved the bill by nonrecord vote, one member recorded voting nay, on April 17.

The **HRO analysis** of the House companion bill, HB 275 by Goolsby, appeared in the March 21 *Daily Floor Report*.

License to carry concealed handguns

SB 780 by Green
Died in House committee

SB 780 would have required the Department of Public Safety to issue licenses to carry concealed handguns. Applicants would have had to take up to 20 hours of training in handgun proficiency and the laws relating to use of handguns. Applicants would also would have been required to provide certain information, pay a \$250 fee, and show a greater need to carry a handgun than the general public. The bill also specified qualifications and exclusions for licensees.

Supporters said current Texas law is overly restrictive in prohibiting people who need to protect themselves from carrying a handgun. The Texas Constitution allows the Legislature to regulate, but not to prohibit, the carrying of handguns. This bill would encourage the responsible use of handguns by requiring as much training for an applicant as for security guards. The bill would help reduce crime because most criminals are more afraid of armed victims than of police.

Opponents said the bill would have little effect on crime because most criminals could draw or use a gun before an armed victim could. The real effect of this bill would be to increase the number of killings by accident or in the heat of arguments and fights.

Legislative History. The *Senate* passed SB 780 by a voice vote, six members recorded voting nay, on May 13. The bill was referred to the *House* State Affairs Committee, which took no further action on the bill. The State Affairs Committee reported the companion bill to SB 780, HB 2334 by Stiles, Wilson et al., on May 21 to the House Calendars Committee, which took no further action on the bill.

Sentencing in capital cases

SB 880 by Montford
Effective September 1, 1991

SB 880 changes the procedures for sentencing in capital murder cases and allows a sentence of life imprisonment. The bill allows both sides in a trial to make arguments and present any relevant and legally obtained evidence on whether the death penalty should be imposed. It deletes the issue of whether the offense was committed "deliberately," and adds an issue (in cases in which the defendant was charged as a party) of whether the defendant intended or anticipated the loss of human life. It adds a requirement to instruct the jury to consider whether there are any mitigating circumstances reducing the defendant's moral blameworthiness (such as mental retardation) that should result in a sentence of life imprisonment rather than death. It deletes a 60-day deadline for automatic review by the Court of Criminal Appeals.

When a sentence is overturned because of errors in the punishment phase, SB 880 requires only a new punishment trial, not a new trial on guilt or innocence. The bill allows a sentence to be reformed to life imprisonment after a successful appeal if the Court of Criminal Appeals finds insufficient evidence on one of the required issues to support imposition of the death penalty or if the district attorney so requests within 30 days of the reversal of the original sentence. The bill deletes a provision for disqualification of jurors who will not swear that the punishment for a capital offense will not influence their deliberations on any fact issue.

Supporters said the bill would bring Texas law into line with the requirements on mitigation set out by the U.S. Supreme Court in its *Penry* decision. It makes sense to allow the Court of Criminal Appeals simply to reform a death sentence to life if the court feels there is insufficient evidence on one of the issues to support imposing the death penalty and to allow the prosecutor to forgo an attempt to reinstate the death penalty in questionable cases. The disqualification of prospective jurors based on their failure to swear that the possible punishment would not affect their deliberations was often misunderstood by jurors and was declared unconstitutional more than a decade ago.

Opponents said the bill's definition of mitigation was so watered down from the language in *Penry* that it would probably generate many more appeals. Many of the terms are vague and subject to inconsistent interpretation and jurors should be informed of the results of a hung jury on any issue.

A sentence of life without parole subjects the state to enormous costs of warehousing geriatric prisoners. A life sentence should require that the defendant serve at least 35 years (or a similar period).

Legislative History. The *Senate* amended the bill to specify that life imprisonment would be without possibility of parole, then passed the bill on May 3 by 28-1. The *House* laid out SB 880 in lieu of its companion, HB 1240, and passed a technical amendment, then passed the bill on May 10 by nonrecord vote. The *Senate* concurred in the House amendment on May 17.

The **HRO analysis** of two bills with provisions similar to SB 880, HB 1240 and HB 9, both by McCollough, appeared in the May 6 *Daily Floor Report*.

Rights of crime victims

SB 1407 by Lyon
Effective September 1, 1991

SB 1407 implements the provisions of a 1989 constitutional amendment that added the rights of crime victims to the state Constitution. SB 1407 requires law enforcement agencies investigating crimes to provide written notice to the victim about the availability of emergency and medical services if applicable, specific information about eligibility and compensation from the Crime Victims Compensation Act, and pertinent information on social service agencies. The prosecution also must provide relevant information regarding court procedures and the victim's rights. SB 1407 includes provisions to protect the victim's privacy and requires courts to include a copy of a victim-impact statement (if one has been submitted) before accepting a plea of guilty or nolo contendere plea.

Supporters said many victims are unaware that they even have rights under the law. SB 1407 would protect the privacy of victims and provide much-needed direction to law enforcement agencies and prosecutors.

Opponents said the bill puts the burden on victims to *request* certain information concerning their rights, the status of their court case and the person who injured them. Victims are often unaware of their right to that information and should receive it automatically at the crime scene.

Legislative History. The *Senate* passed the bill by voice vote on May 1. The *House* passed the bill by 137-0 on May 14.

The **HRO analysis** of the companion bill, HB 2726 by Gallego, appeared in Part Three of the May 8 *Daily Floor Report*.

CORRECTIONS

Conjugal visits for married prison inmates

HB 39 by Hudson
Died on the House floor

HB 39 would have allowed the prison system to permit private conjugal visits for married inmates in a state prison facility. The Board of Criminal Justice would have adopted rules and procedures governing eligibility of married inmates to receive conjugal visits. The board could have required proof of marriage in the form of a marriage license or certificate of evidence of informal or common-law marriage that is recognized by state law.

Supporters said the measure would have allowed the prison system, at its discretion, to use an inmate management system that has proven successful elsewhere. Ten other states, Canada, Mexico, most of Western Europe and even the Soviet Union allow such visits, having found them a useful aid to prison management and inmate rehabilitation. Conjugal visits help retain what is left of an inmate's family structure, which deters recidivism. States that allow conjugal visits also have lower rates of sexual assault.

Opponents said allowing conjugal visits would be too costly compared to any small benefit they would provide. The prison system — now filled to capacity — does not have any space for this purpose. Building additional space and providing guards to escort the prisoners would be costly. Conjugal visits would increase the possibility of passing contraband commodities. Allowing such visits would raise many troubling questions regarding the state's responsibilities to guard against weapons smuggling, substance abuse, disease transmission and to provide birth control measures.

Legislative History. The *House* adopted an amendment requiring a married inmate to consent to HIV and sexually transmitted disease tests and to agree to release the results to the spouse; have a medical diagnosis of being free of communicable diseases, including HIV infection; agree to participate in sexual disease transmission counseling and an amendment specifying that conjugal visits only be permitted between an inmate and a visitor of the opposite sex. HB 39 then failed to pass to engrossment by 28-108 on May 15.

The **HRO analysis** appeared in Part Two of the May 13 *Daily Floor Report*.

Allowing expansion of state prison capacity

HB 124 by Culberson, et al.
Effective June 16, 1991

HB 124 permits the prison system to increase inmate population above the current 95-percent-capacity limit imposed by state law and federal court order if the criminal justice board, the governor and the attorney general agree to the increase. HB 124 also establishes the maximum capacity for each unit currently in the TDCJ-ID system, sets up a procedure for allowing these units to exceed capacity and prohibits certain inmate housing situations such as triple-celling and tent housing.

Supporters said the bill would be the first step in codifying requirements of the federal court order in the *Ruiz* decision that guard against overcrowding in the prisons, while maintaining a reasonable and necessary flexibility in determining the system's maximum capacity. Any population increase beyond the 95 percent cap would go through a rigorous review process by the criminal justice board, the governor and the attorney general. HB 124 would relieve part of the state's overcrowding crisis by permitting prison officials to use much-needed space. Overcrowding in county jails, which now hold around 10,000 state prisoners awaiting transfer, would be relieved, and the parole system would feel less pressure to release inmates to make room for new admissions.

Opponents said the measure was just a Band-Aid on the criminal justice system. Rather than trying to cram more inmates into an already packed system, use of community corrections should be expanded or new prison facilities should be constructed. HB 124 does not meet the requirements of the *Ruiz* decision because *Ruiz* sets very specific guidelines to follow, while HB 124 simply says that "adequate" and "sufficient" measures would be taken to insure that inmates are treated constitutionally. HB 124 would allow the very agency that for years mistreated inmates unconstitutionally to decide what operations will meet constitutional muster.

Legislative History. The *House* passed the bill on May 15 by 143-0. The *Senate*, after adopting committee amendments, passed HB 124 on May 23 by 31-0. On May 25 the *House* concurred with the Senate amendments by 136-1-3.

The **HRO analysis** appeared in Part One of the May 13 *Daily Floor Report*.

Work program as punishment for felony offenses

HB 2034 by Granoff
Died in the Senate

HB 2034 would have changed the penalties for numerous non-violent felonies, which would have been punishable by fines and assignment to "work felony" programs to be established statewide by the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID). Inmates would have worked off their sentence during the day and returned home in the evenings. HB 2034 would have given courts the authority to consider the gravity and circumstances of an offense and consider the defendant's history, character and rehabilitative needs before sentencing a convicted felon to a work camp instead of prison. All degrees of substance abuse offenses under the Health and Safety Code could have been considered work felonies.

Supporters said HB 2034 would alleviate Texas' serious prison and jail overcrowding problem by reforming current sentencing practices to allow non-violent offenders to work off their sentences by performing work that benefits the state. Because of overcrowding, prison has lost much of its deterrent effect; establishing a work-felony program would have restored the concept of punishment in the minds of criminals and the public. HB 2034 would have ensured that more first-time felons, who now often receive probated sentences and are never even incarcerated, would receive more appropriate punishment.

Opponents said HB 2034 would have created a far greater threat to public safety than the early release of prisoners by allowing felons to work among the public, then go home to do as they please when the work day is over. HB 2034 would have permitted convicted drug dealers, thieves, property offenders and many white-collar criminals to get off lightly without doing prison time. Other Opponents said the bill should require substance abusers and chemically dependent participants in the program to get some kind of treatment while working off their crime.

Legislative History. The *House* initially did not pass HB 2034 to engrossment by 60-84 on May 14. After voting to reconsider the bill, the House adopted an amendment to allow judges the discretion to determine whether to sentence an offender to a work felony camp and to include liability immunity for volunteer organizations participating in the program, then passed the bill by nonrecord vote, eight members recorded voting nay, on May 15. On May 24 the *Senate* Criminal Justice Committee reported the bill favorably, with amendments, but no further action was taken.

The **HRO analysis** appeared in Part One of the May 15 *Daily Floor Report*.

Reporting requirement for sex offenders

SB 259 by Zaffirini
Effective September 1, 1991

SB 259 requires persons convicted of certain sex offenses to report to local law enforcement authorities within seven days of arriving in any municipality or county and within seven days of any change of address. This information must be forwarded to the Department of Public Safety. The reporting requirement lasts as long as an offender is on parole or probation or until a juvenile turns 21.

Supporters said sex offenders have a higher rate of recidivism than any other kind of offender. Local authorities need to know the whereabouts of sex offenders, and this bill would help convince offenders that any further offense would be punished.

Opponents said the offenses covered by this bill include some relatively minor offenses that involve consensual sex (with a minor) or nude dancing (indecent exposure) and for which offenders should not have to report. Offenders are already required to report to their probation or parole officers; it makes no sense to set up a parallel system. The real problem is lack of personnel in the probation and parole systems and lack of cooperation with the police.

Legislative History. The *Senate* passed the bill on April 16 by voice vote, three members recorded voting nay. The *House* amended the bill to end the reporting requirement when probation or parole ends rather than 10 years after release from prison or from adjudication, then passed the bill by nonrecord vote, one member recorded voting nay, on May 25. The Senate concurred with the House amendments on May 26.

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

Restricting name changes for convicted felons

SB 334 by Whitmire
Effective September 1, 1991

SB 334 lists information that must be included in a petition for a name change and prohibits courts from ordering a change of name for any convicted felon earlier than two years after the person has completed probation or parole, unless the person has been pardoned. The bill also requires courts to find that the change is in the public interest before changing a name, but allows changes incident to an adult adoption.

Supporters said the bill is urgently needed because convicted felons are able to evade any connection to their criminal record just by changing their names.

Opponents said the bill went overboard in requiring documents for petitions for name change. Many of the criminal records of arrest and the like would be difficult or impossible to obtain and the bill's objectives would be met without requiring so much paperwork.

Legislative History. The *Senate* passed the bill by voice vote on March 7. The *House* amended the bill to specifically allow a change of name as part of an adult adoption, then passed the bill on the Consent Calendar on May 24.

The **HRO analysis** of a similar bill, HB 837 by Yarbrough, et al., appeared in the May 13 *Daily Floor Report*.

Substance abuse treatment for offenders

SB 828 by Lyon
Effective December 1, 1991 (see Note)

SB 828, as later amended (see Note), requires the Texas Commission on Alcohol and Drug Abuse to create treatment alternatives to incarceration in counties with populations over 550,000 (Harris, Dallas, Bexar, Tarrant, El Paso and Travis counties, according to 1990 census figures) for nonviolent criminals with alcohol and drug abuse problems. The program must include screening, assessment and referral to appropriate treatment those convicted of nonviolent offenses other than class C misdemeanors. The commission is required to contract for treatment services and may pay for them if other public or private funds are not available.

The Texas Department of Criminal Justice (TDCJ) and the Commission on Alcohol and Drug Abuse are required to develop a program to screen inmates for drug and alcohol abuse and to determine treatment needs. The department must create three- and six-month programs within the prison system to treat inmates in therapeutic communities that must contain highly structured work, education and treatment schedules. TDCJ must provide at least 450 beds for males and 50 beds for females in fiscal 1992; at least 900 beds for males and 100 beds for females in fiscal 1993; at least 1,300 beds for males and 200 beds for females in fiscal 1994; and at least 1,700 beds for males and 300 beds for females in fiscal 1995 and succeeding years.

Supporters said nearly 80 percent of Texas prison inmates admit to having some kind of substance abuse problem. Treating abuse of drugs and alcohol by nonviolent offenders would result in reduced crime, lower recidivism rates and reduced costs related to the criminal justice system, all of which would lower costs to the state and to society in general. It is more humane to help offenders deal with drug or alcohol dependency than just to punish them.

Opponents said the bill would require the state to begin expensive, unproven programs that will have a high cost to future Legislatures. The bill specifies that the programs use inpatient treatment, which isolates abusers from the real world. Outpatient treatment — when the patient learns abstinence while dealing with old temptations — can be cheaper and more effective.

Legislative History. The *Senate* amended the bill to change the effective date from September 1, 1991 to September 1, 1994 and to specify that the institutional division must contract with the Texas Commission on Alcohol and Drug abuse to implement the three- and six-month programs, then passed the bill by voice vote on May 20. The

House approved a committee amendment that changed the effective date to September 1, 1993 and put off for two years the dates for TDCJ to begin the three- and six-month therapeutic community programs and the alternative-to-incarceration programs, then passed the bill by nonrecord vote on May 25. The *Senate* concurred with the House amendments by voice vote on May 26.

The **HRO analysis** appeared in the May 23 *Daily Floor Report*.

Note. SB 828 was amended by HB 93 by Hightower and Stiles, second called session. The effective date of SB 828 was changed from September 1, 1993, to December 1, 1991. The deadlines for TDCJ to begin three- and six-month substance abuse programs were advanced by two years. The first set of beds for the programs must be provided in fiscal 1992 rather than fiscal 1994, and the deadline for establishing treatment alternatives to incarceration for certain offenses was moved up from January 1, 1994 to March 1, 1992. The deadline for a multi-agency report required by SB 828 to the governor and Legislature studying a comprehensive statewide treatment program for chemically dependent offenders, indigent people and youths was accelerated from February 1, 1993 to December 1, 1992.

ELECTIONS/ ETHICS

Repeal of dual candidacy "LBJ Law"

HB 1297 by Berlanga
Died in the Senate

HB 1297 would have amended the Election Code to repeal the exception to the prohibition against dual candidacy for candidates running for president or vice president of the United States and for another office.

Supporters said repealing the "LBJ Law" would have closed a rarely used loophole allowing politicians to run risk-free campaigns for national office. By being able to run two campaigns for the price of one, candidates using the LBJ Law have an unfair advantage over their opponents. Candidates running in national elections get a tremendous amount of free press coverage not available to their local opponents. Having the same person running for two different offices also can create voter confusion and add to cynicism about the political process. If candidates are unwilling to give up their office to run for the nation's highest offices, they should not be running in the first place.

Opponents said the bill would have discouraged Texas officeholders from seeking national office. Texas candidates should not have to sacrifice an influential office, or congressional seniority, that benefits the state in order to run for president or vice president. Some called it a partisan attack on U.S. Sen. Phil Gramm, who is up for reelection in 1996 and may also run on the national ticket that year.

Legislative History. The *House* tabled an amendment that would have allowed dual candidacies in primary elections, then passed the bill by 90-56-1 on April 10. The *Senate* State Affairs Committee reported the bill favorably without amendments, but the bill was never taken up by the full Senate.

The **HRO analysis** appeared in the April 9 *Daily Floor Report*.

Allowing students in polling places for mock elections

HB 2395 by Hirschi, et al.
Effective September 1, 1991

HB 2395 authorizes on a local-option basis mock student elections to be held in conjunction with general, special or primary elections. Students may enter a precinct polling place to cast an unofficial ballot for the same offices and measures appearing on the official ballot. Student elections may be held on the day before, or the day of, the election, and only students in kindergarten through 12th grade are allowed to participate. Those ordering the student election are also responsible for appointing a separate set of election officers to conduct the election, supervise the students and report the results. The results of the student election may be made on election day after the polling places have closed. All expenses incurred by the student election, including personnel expenses, must be paid out of private donations and grants. Election officers for the official election may not serve in the student election.

Supporters said mock elections would help educate young people about the electoral process. Voter apathy is a serious problem both nationally and in Texas. Instilling the habit of voting at a young age could significantly increase voter participation. Moreover, giving young people the chance to "vote" would involve the whole family, which would increase voting by the parents of participating students. The secretary of state will establish rules to ensure that mock elections will not disrupt or impede official elections, and separate election officials will be responsible for supervising the students.

Opponents said there is no reason to conduct such mock elections in the actual polling places while real elections are in progress. An influx of children and teenagers into the polling place may be disruptive and distracting to adult voters participating in the official election.

Legislative History. The *House* amended HB 2395 and passed it by nonrecord vote, six members recorded voting nay, on April 25. The *Senate* amended the bill to allow mock elections only on the day before the official election and passed, then passed the bill by voice vote, one member recorded voting nay, on May 14. The House refused to concur with the Senate version, and a conference committee was appointed. The conference report provided for mock elections to be held on either the day of an official election or the day before; the *House* adopted the conference report on May 24 and the *Senate* adopted it on May 25.

The **HRO analysis** appeared in the May 24 *Daily Floor Report*.

Establishing Texas Ethics Commission and revising state ethics laws

SB 1 by Glasgow
Effective January 1, 1992

SB 1 establishes the Texas Ethics Commission and provides additional regulation of the activity of lobbyists and public officials.

Ethics Commission. The State Ethics Advisory Commission is abolished and the Texas Ethics Commission will be created in its place. The new ethics commission is composed of eight members, no more than four of one party, appointed from lists submitted by members of each of the major political parties in the House and the Senate (see Note). The commission will assume the secretary of state's duties regarding advisory opinions, lobby registration and expenditures, financial disclosure statements by state officials and campaign spending and contributions. (The commission must computerize and cross-reference all reports and permit electronic access to the public by January 1, 1993.) In addition, the commission will provide ethics training for legislators and state employees, as well as study campaign finance laws and judicial campaigns and relationships.

The commission may investigate formal complaints against state officials but cannot initiate its own investigations unless six of the eight commissioners agree. The commission will have the authority to hold hearings, issue subpoenas, agree to the settlement of issues, initiate civil enforcement actions and refer cases to the appropriate prosecuting attorney. All proceedings leading up to a formal hearing on a complaint must be confidential. Revealing facts about a preliminary investigation or filing a frivolous complaint will result in a \$10,000 civil fine. For ethics infractions, the commission may issue and enforce cease and desist orders; impose civil fines up to \$5,000 and deny, suspend or revoke a lobbyist's registration.

Lobby Regulation. If a lobbyist spends more than \$50 per day on a state official for food and beverages, entertainment or transportation and lodging, the name of the official and the place and date of the expenditure will have to be reported. Lobby expenditures must be reported (in a category range to be set by the commission) for food and beverages, entertainment and gifts, but not transportation and lodging. The lobbyist must be present when the amounts are spent. Lobbyists also will have to report the amount and source of their own finances, in seven categories ranging from "less than \$10,000" to "more than \$200,000."

Lobbyists will be limited in certain amounts they may spend on state officials. They may spend no more than \$500 per year on a state official for entertainment, mementos or gifts or awards. There is no spending limit for food and beverages. Spending for pleasure

trips and trips for ceremonial events will be prohibited; however, no limit is placed on spending for transportation and lodging for fact-finding trips or trips involving services provided by the official (e.g., giving a speech).

Regulating public officials. Legislators will no longer be able to use political funds to purchase real estate or pay themselves or their spouse or children for personal services. Legislators who represent clients before state agencies must disclose the client, the agency and the compensation received (by categories to be set by the ethics commission). Legislators may not accept honoraria for their official duties. Campaign contributions may not be accepted inside the State Capitol building. Candidates making loans to their own campaigns are limited to \$500,000 in reimbursement per election if they run for governor and \$250,000 per election for all other campaigns for statewide office. Corporations and labor unions may make direct contributions to political parties, up to the 60th day before the election. Accepting political contributions in exchange for services rendered will be a felony, providing the act can be proved by direct — not circumstantial — evidence. Former hearings examiners may not appear on behalf of clients before an agency regarding matters on which they were involved, and former members of state agency boards and agency directors may not lobby their former agencies for two years after their retirement.

Supporters said having legislative party caucuses nominate ethics commissioners is the best way to ensure a strong, bipartisan commission. While questionable ethical behavior will be given close scrutiny, the commission will not be so one-sided as to encourage political witch hunts. SB 1 will also provide long overdue revisions to the state's ethics laws by requiring more detailed reporting of lobbyist spending, banning honoraria, prohibiting the use of political donations to buy real estate, discouraging wealthy candidates from loaning vast sums of money to their own campaigns, barring legislators from taking lobby-paid pleasure trips, and making it easier to prosecute bribery cases.

Opponents said ethics legislation is unnecessary. State officials should operate under simple rules of conduct. The Texas Constitution already strictly forbids either soliciting or receiving any gift or thing of value with the understanding — expressed or implied — that an official's vote or influence would be affected in any way. Other opponents said that the bill's loose restrictions on lobby spending do not go far enough in curbing lobbyists' influence over state officials. The commission could end up whitewashing legitimate charges of misconduct since much of its preliminary investigation would be in secret and six of eight members would have to agree to take action. The penalty for filing a "frivolous" complaint could deter reports of misconduct. The bill has no provision for reporting expenditures on transportation and lodging and no spending limit on food and beverages. In addition, the bill does not limit campaign contributions, ban the use of campaign contributions to defray officials' living expenses, prohibit lawmakers

from representing clients before state agencies or require them to reveal the sources of their income.

Legislative History. The *Senate* passed SB 1 by 28-0 on February 27. The *House* State Affairs Committee approved a committee substitute containing no annual aggregate limit of \$500 on lobby expenditures on state officials or limits on campaign contributions or campaign debt reimbursement, changed the state's bribery law or prohibit local governments from hiring private lobbyists. The House adopted several amendments, including to require that publishers of editorials state any potential conflict of interest regarding advertisers in their publication. Amendments that would have set a daily spending limit of \$25 and a \$250 annual aggregate limit on lobby expenditures and would have placed a limited "revolving door" prohibition against former legislators, state officers or employees lobbying the Legislature or their former agencies were tabled, then the House passed the bill by 136-6-3 on May 16. The *Senate* refused to concur with the House version of SB 1 on May 27, and a conference committee was appointed. Among the major changes made by the conference committee were provisions to add two members to the ethics commission, to computerize financial disclosures, to place an annual \$500 limit on how much a lobbyist can spend on a public official, to tighten up the bribery statute, to restrict the use of debt to finance campaigns and to exclude reports on expenditures for transportation and lodging and spending limits on food and beverages. On May 27 the conference report was adopted by the Senate by voice vote, two members recorded voting nay, one recorded present, not voting, and by the House by nonrecord vote, six members recorded voting yes, one member recorded voting nay.

The **HRO analysis** of the bill appeared in the May 16 *Daily Floor Report*.

Note. SJR 8, proposed by the Legislature and adopted by the voters at the November 5, 1991 election, provides for appointment of the ethics commission from nominees made by members of the major parties in the House and in the Senate. Under the current legislative makeup, the House Democrats nominate two members (one appointed by the governor and one by the House speaker), House Republicans nominate two members (one appointed by the governor and one by the speaker), Senate Democrats nominate two members (one appointed by the governor and one by the lieutenant governor) and Senate Republicans nominate two members (one appointed by the governor and one by the lieutenant governor). The commission also will set legislative salaries, with voter approval, and levels of per diem pay, up to the maximum amount allowed as a tax deduction by the federal Internal Revenue Service.

EMPLOYEES

Teacher retirement benefit cost-of-living adjustment

HB 7 by Robnett, et al.
Died in conference committee

HB 7 would have created a fund from which the Teacher Retirement System could have granted automatic cost-of-living adjustments (COLAs) to retiree benefits, beginning in fiscal 1999. The COLA would have been the lesser of 50 percent of the increase in the Consumer Price Index for the preceding calendar year, or 3 percent. The COLA fund would have been made up of 75 percent of TRS's actuarial gains between 1990 and 1998. Funds transferred to the COLA account could not have been considered in actuarial valuations of TRS. The bill also would have increased retirement or survivor benefits for those who retired or died before May 1, 1989, with 10 years or more of service, and would have brought TRS into compliance with the federal Older Workers Benefit Protection Act by September 1, 1992, including establishing an optional disability program.

Supporters said the COLA fund would have allowed TRS to assure its members of planned yearly cost-of-living adjustments based on the Consumer Price Index, without any additional state funding. Most pension systems and federal social security have automatic COLAs to allow payments to keep up with inflation.

Opponents said COLAs are expensive, and if TRS investment returns were lower than expected, the state could be forced to pay the difference. The Legislature has granted regular benefit increases based on the funds available and will likely continue to do so. Diverting 75 percent of the actuarial gains for the next eight years would not let the state save money by lowering its contributions to the TRS, even though TRS is actuarially sound, and would be a way for TRS to set aside its profits for eight years and keep state contributions artificially high. Also, the bill would not actually require the TRS to grant any COLA, giving TRS too much discretion.

Legislative History. The *House* passed HB 7 by nonrecord vote, three members recorded voting nay, on May 1. The *Senate* amended the bill, then passed it by voice vote, four members recorded voting nay, on May 24. The *House* refused to concur with Senate amendments on May 26. A conference committee was appointed, but no further action was taken.

The **HRO analysis** appeared in the May 1 *Daily Floor Report*.

Note. During the first called session, the Legislature enacted HB 158 by Robnett, which included the benefit provisions of HB 7 but not the COLA adjustment.

Salary deductions for professional dues of school personnel

SB 190 by Whitmire
Effective September 1, 1991

SB 190 entitles all school district employees to have professional fees or dues automatically deducted from their salaries. Employees are to notify the district in writing of the name of the organization(s) and the number of pay periods per year to be affected. Districts will deduct fees until notified to stop by the employee and are permitted to charge a reasonable administrative fee for the service.

Supporters said the bill would allow all school employees in Texas the convenience of automatic payroll deduction for professional dues now offered by more than 700 school districts. It would not cost the state nor the school districts any money and would be a completely voluntary option. Payroll deductions would not plant the seed of unionization of teachers as only about half the teachers in Texas belong to professional organizations.

Opponents said the bill would be the first step toward forming school employee unions. Certain professional organizations pushing for this bill are affiliated with national organizations that are unions or union-oriented. The bill would make it easier for these organizations to acquire members and more complicated for those members who join to cancel their membership. The bill should require an annual renewal date to make the organizations more responsive to the membership instead of an automatic roll-over for continued membership.

Legislative History. The *Senate* passed SB 190 by 24-6 on April 25. The *House* tabled amendments that would have required annual registration for dues checkoffs and would have prevented organizations from making any political contributions with dues, then passed the Senate version by 72-58 on May 9.

The **HRO analysis** of the companion bill, HB 304 by Luna, appeared in the May 9 *Daily Floor Report*.

Legislative leave for peace officers, firefighters

SB 406 by Barrientos
Effective August 26, 1991

SB 406 requires cities with populations of more than 200,000, counties of more than 500,000 and the state to grant leave to peace officers and firefighters to serve in or appear before a governmental body during a regular or special session of that body. The person requesting legislative leave must reimburse the employer for costs such as wages and pensions and must apply in writing at least 30 days in advance. The leave may be denied if an emergency or manpower shortage exists. If granting the leave results in a manpower shortage, and another peace officer or firefighter of equal rank volunteers to work for a person requesting legislative leave, the employer must grant the leave. A peace officers or firefighters association may not reimburse a person, or a person's employer, for leave taken to serve in the Legislature.

Supporters said SB 406 would ensure the right of peace officers and firefighters to appear before federal, state or local governments or lobby government officials. Some cities have been reluctant to grant such leave, particularly if the applicant supports a policy differing from the employer's. SB 406 would not cost employers anything and would apply only to the largest cities and counties, which have enough personnel to allow for leave policies.

Opponents said the state should not give police officers and firefighters a special privilege not granted to employees in other fields. The bill would take away local control of management and personnel decisions and make scheduling and planning difficult and unpredictable. The bill's provision for substitute workers does not consider the skill level of substituting employees.

Legislative History. The *Senate* amended the bill to include service in governmental bodies as eligible legislative leave and passed the bill by 21-10 on April 4. The *House* considered the bill on the Consent Calendar, amended it to prohibit a peace officers or firefighters association from reimbursing persons or their employers for service in the Legislature and passed it by 72-64-4 on May 8. The *Senate* concurred with the House amendments on May 10.

Requiring security bonds for unpaid wages

HB 546 by Moreno
Effective September 1, 1991

HB 546 authorizes the Texas Employment Commission (TEC) to require employers to post three-year security bonds if they are convicted of twice violating the payment rights of their employees or if a final order of the TEC against them for nonpayment of wages remains unsatisfied more than 10 days after the date of final appeal. The bonds would be set by TEC at an amount that would cover a similar offense in the future. If an employer, after posting the bond, is convicted again of violating the payment rights of employees or if a judgment for nonpayment of wages remains unsatisfied for more than 10 days after the date of final appeal, the bonds may be cashed by the state. If the surety company that issued the bond willfully fails to pay any verified claim for unpaid wages, the company will be subject to civil penalties. The bill also makes it a third-degree felony for employers to wilfully defraud their employees of their wages.

Supporters said the bill would provide wage security to employees whose bosses have histories of not paying their workers. Without such a law, some Texas workers are ripe for exploitation. For example, some shady businesses in border areas open fly-by-night garment-making factories, never intending to pay their employees. Before TEC could require a company to post a wage security bond, TEC would have to determine that the company's employees were at risk and that the amount of the bond reflected the size of the offense.

Opponents said the bill was so broadly written that it could adversely affect many honest businesses in Texas. It is not clear what would trigger a bond requirement. If the bill is interpreted literally, a minor dispute over an employee's vacation pay could cause some large Texas companies like General Dynamics or IBM to have to post huge security bonds guaranteeing all their employees' wages.

Legislative History. The *House* amended the bill by requiring two wage violations before a wage bond is required, eliminated the provision requiring surety companies to be liable for delinquent wage payments and made it a third-degree felony for an employer to hire employees with the intention of not paying them, then passed the bill by nonrecord vote, seven votes recorded against, on May 17. After amending the bill, the *Senate* passed it by voice vote, with five votes recorded against, on May 23. The *House*

refused to concur with the Senate version and a conference committee was appointed. The conference report clarified employers' criminal liability and was passed by both the House and Senate on May 27.

The **HRO analysis** appeared in Part Two of the May 13 *Daily Floor Report*.

State employee health insurance and retirement benefit increases

SB 1331 by Glasgow
Effective September 1, 1991

SB 1331 makes numerous changes to the Employees Retirement System (ERS), including increasing benefits for retirees (from 1 percent for those who retired in 1990 to 65 percent for those who retired in before 1954), reducing the vesting period from 10 to five years, and increasing maximum allowable benefits to 100 percent of average salary for those with 50 years of service. It also increases the minimum monthly benefit from \$75 to \$150, allows full retirement benefits at age 50 with 30 years service, or at age 55 with 25 years service, permits the board to increase annuities by rule, changes disability provisions to conform to new federal law, allows retirement benefits to be based on the highest 36 months of salary instead of the highest 36 months salary in the last five years of employment, liberalizes the rules for establishing military service credit, and allows members who have selected an optional retirement plan to automatically receive the standard annuity if the beneficiary dies before the retiree.

The bill increases elected officials' retirement benefits from 60 or 80 percent to 100 percent of a district judge's salary. It allows elected members to retire with full benefits, instead of actuarially reduced benefits, at age 50 with 12 years of service. It allows members of the elected class with at least eight years service to transfer service between the employee and elected classes, instead of only from the elected class to the employee class. It allows members of the elected class with eight years service to reestablish service canceled under the employee class by contributing an amount based on the current salary of the elected position for the position last held plus 10 percent a year. It also allows certain members who have held two or more offices in the House or the Senate to transfer their employee-class membership to the elected membership class.

SB 1331 increases benefits for members of the Law Enforcement and Custodial Officer Supplement Retirement Fund who retire before age 55 with 30 or more years of service.

The bill specifies that only with 10 years service may retirees participate in the state group insurance plan. It allows the board to vary state group insurance contributions among different health benefit plans as long as it offers members a fair choice among the various health plans. The bill defines "health benefits plan" to mean any group policy medical or dental plan, health maintenance organization, preferred provider arrangement, or any combination of these plans. It specifically allows members to belong to health maintenance organizations. It allows the ERS board to develop health benefits plans, to monitor plan features for efficiency and cost containment that include taking into account regional health-care cost variations within the state and relevant risk characteristics of

each health care plan. It allows the board to define optional coverage that may be paid by state health contributions as well as voluntary coverage to be paid by the employee or retiree.

Supporters said ERS is actuarially sound and can afford to increase benefits for its members. It gives the ERS board more control over health care costs, which will reduce future increases in health care insurance costs. The bill allows the board to establish a "triple-option" plan so state employees can participate in single-indemnity health insurance plans such as Blue Cross/Blue Shield, HMOs and preferred provider organizations (PPOs), which reimburse members at a higher rate for choosing specified medical providers. State health insurance contributions will be more equitable because they will be based on sophisticated and accurate measurements and will more accurately reflect health care costs for different types of health providers in different parts of the state. Generous retirement benefits will help offset the low pay legislators receive while in public service.

Opponents said the bill will not lower future health insurance costs, but can result in an inequitable distribution of state insurance payments among employees depending on the type of insurance they select. Allowing elected officials to retire and begin receiving standard benefits at age 50 instead of age 55 with 12 years service is self-serving. The bill also allows certain House or Senate employees who are not elected officials to receive elected officials retirement benefits, providing special benefits to a few.

Legislative History. The *Senate* passed SB 1331 by 31-0 on April 4. The *House* adopted amendments that included the ad hoc benefit increases for retired state employees, changes in the ERS health insurance program and lowering the age at which an elected official may retire, then passed the bill by nonrecord vote on May 21, 26 members recorded voting nay and one present, not voting. The *Senate* concurred with the House amendments by a voice vote, five members recorded voting nay, on May 24.

The **HRO analysis** appeared in Part Two of the May 21 *Daily Floor Report*.

ENVIRONMENT — AIR QUALITY

Indoor Air Quality Act

HB 2275 by Naishtat
Died in the Senate

HB 2275 would have required the Texas Board of Health to establish minimum standards for indoor air quality, ventilation and pollution control systems in state government buildings. Building with materials that contaminated the air, allowing or causing indoor air pollution or poor ventilation in such buildings would have been prohibited. Violators would have been subject to civil suits for injunctive relief. The standards would not have applied to federal buildings or installations, asbestos regulation or pollution from tobacco smoke. The Board of Health would also have appointed an advisory committee to advise and make recommendations to the board.

Supporters said measurement and regulation of indoor air pollution is needed to curb a serious health hazard that leads to chronic illness and decreased productivity. Regulation would ensure a safer workplace for many state employees while saving the state in reduced health insurance claims and increased worker productivity.

Opponents said the bill would cost the state money when it has no money to spare. This bill could result in expensive and time-consuming civil suits against the state and prohibitively expensive remodeling of buildings, when there is no definite proof that the health of the public is threatened.

Legislative History. The *House* passed the bill by nonrecord vote on the Consent Calendar on May 17. The *Senate* referred the bill to the Health and Human Services Committee, which reported it favorably, without amendments, on May 23; no further action was taken.

Natural gas incentives for the generation of electricity

HB 2853 by Earley
Died in Local and Consent Calendars Committee

HB 2853, as substituted in House committee, would have allowed any electric utility entering into a long-term contract for natural-gas supplies for the generation of electricity not to provide the contract to the Public Utility Commission (PUC) for certification. If a utility submitted a contract for PUC certification, the PUC would have been required to deem as just and reasonable such contractual provisions as fixed prices and fixed or predetermined price escalators, contractual prices pegged to 95 percent of the price for residual fuel oil, prepayments, prices that changed based on various indices and "minimum take" of up to 50 percent of the utility's entire gas requirements. The PUC would have to have decided not to certify such contracts within 90 to 120 days. The PUC would have been required to allow full and concurrent recovery of the payment amount for all gas, and such payments on long-term contracts would have been considered reasonable and necessary expenses.

Supporters said incentives should be provided for use of clean-burning natural gas since half of the electrical power generated in Texas comes from coal-fired plants. Since Texas produces one-fourth of the nation's natural gas, an ample local supply is available as one of the cleanest-burning and least costly alternative fuels.

Opponents said HB 2853 did not address the proper regulatory point for determining appropriate fuel use: the construction of electric generation plants. It did not address "technology in place," which dictates the fuel to be burned as well as new power plant construction. HB 2853 would have improperly *predetermined* the prudence of long-term gas contracts.

Legislative History. The *House* Energy Committee on May 15 reported a complete substitute that removed language on natural gas as the "fuel of choice" and deleted other language regarding fuel switching. The bill was placed on the Consent Calendar May 21, withdrawn the same day, and returned to the Local and Consent Calendars Committee, where no further action was taken.

Adopting California vehicle-emission standards

SB 868 by Ellis, Moncrief
Died in the Senate

SB 868 would have required the Texas Air Control Board (TACB) to report to the Legislature by January, 1993 on the benefits of adopting California vehicle-emission standards, which are more stringent than those mandated by the federal Clean Air Act. If the study had shown that stricter emission standards would have led to better pollution reduction than the federal air quality standards, the TACB would have been required to adopt the California vehicle emission standards for most cars and light trucks beginning with the model year 1996. The TACB would not have been required to implement the new standards if the cost had exceeded 5 percent of the agency budget.

The TACB would have been required to establish an enhanced vehicle emissions inspection and maintenance program and authorized to assess inspection fees. The inspection and maintenance program would have prohibited most inspection stations from performing emissions-related repairs.

Supporters said fitting cars with stricter emission controls would cost only \$150 more per car, far less than the cost of reducing air pollution by the same amount by placing further controls on industrial sources and small businesses. Failure to adopt stricter emission standards could result in sanctions, loss of federal funds and hardship for businesses in areas in which federal air standards do not attain required levels. Also, stricter vehicle emission standards would create a greater demand for natural gas vehicles, a key growth industry for Texas.

Opponents said the bill could force the price of motor vehicles to skyrocket by requiring new mandatory pollution-abatement equipment. The bill would unfairly target automobile manufacturers for pollution that is caused by a variety of sources and the public would end up paying for regulations with dubious environmental benefit. The state should tailor solutions to its air pollution problem to local needs, not be guided by standards derived from a unique situation in California.

Legislative History. The *Senate* Economic Development Committee reported the bill favorably, with a substitute on May 17, but no further action was taken.

Note. During the first called session, the Legislature enacted SB 2 by Parker, reorganizing environmental agencies and implementing requirements of the federal Clean Air Act. SB 2 requires the TACB to determine the appropriateness of adopting the stricter motor vehicle emission standards and compliance program of the state of California and to report its findings to the 73rd Legislature.

ENVIRONMENT — RECYCLING, WASTE MANAGEMENT

Regulation exemption for paper-recycling carriers

HB 1411 by Clemons, et al.
Died in the Senate

HB 1411 would have excluded certain transporters that are carrying newspapers, newspaper supplements, magazines or other paper products for recycling from the definition of contract or motor carrier under the Texas Motor Carrier Safety Act. (The Motor Carrier Safety Act authorizes the Railroad Commission to supervise, regulate, set rates and adopt rules and safety regulations for vehicles considered common or contract carriers.)

Supporters said removing expensive, unnecessary regulation of recycling carriers would encourage the recycling industry, bringing jobs and money to the state and lessening the burden on state landfills. Transportation costs are so high, and the market for recycled newsprint so weak, that recycling efforts are failing.

Opponents said the bill would lead to deregulation of certain carriers, allowing unregulated, unsafe vehicles and sparking rate wars that encourage drivers to cut back on sleep and maintenance in order to compete. Rate deviations already may be granted for special needs — this bill would take future business away from licensed carriers.

Legislative History. The *House* passed the bill by 79-53 on May 15. The *Senate* Economic Development Committee on May 24 reported the bill favorably with a substitute that, unlike the House bill, did not exclude transporters of plastics from the definition of motor carriers. The bill was placed on the *Senate* Intent Calendar on May 26, but a motion to suspend the regular order of business to take it up on the floor failed by 14-15 on May 26.

The **HRO analysis** appeared in the May 13 *Daily Floor Report*.

Recycling of scrap metals

HB 1763 by Saunders
Effective August 26, 1991

HB 1763 allows shredder "fluff" (material such as glass, plastics, carpets and upholstery that is left over when cars, appliances and other metal items are recycled for scrap) to be disposed of in certain municipal landfills if the material satisfies certain criteria and is not hazardous waste. The bill prohibits the sale of scrap metal for recycling if it contains, without the buyer's knowledge, contaminants such as lead-acid batteries, fuel tanks or PCB capacitors. The sale of such material is a misdemeanor punishable by up to 60 days in jail and/or a fine of up to \$1,000.

The bill also requires the Water Commission to assess the need for commercial hazardous waste management capacity in the state by January 1, 1992, and the need for commercial nonhazardous solid waste disposal capacity in the state by March 1, 1996. The commission will draft rules based on these assessments.

Supporters said the metal recycling industry will be in serious trouble if it is unable to dispose of "fluff" in municipal landfills. This bill would allow recyclers to continue the efficient and economic recycling of automobiles and other metals, ensure that those materials are free of contaminants and result in much needed assessments of the state's disposal capacities.

Opponents said fluff is an industrial non-hazardous solid waste and should not be dumped into municipal landfills without authorization and approval by the Health Department and the Water Commission. The metal recycling industry should not be exempted from state disposal standards, which protect the health of the public. If one industry is exempted from these standards, others will clamor for similar exemptions.

Legislative History. The *House* passed the bill on the Consent Calendar by nonrecord vote on May 7. The *Senate* adopted amendments defining specific criteria for "fluff" to be accepted in municipal landfills and deleting a provision limiting the commission's power over management of certain wastes after January 1, 1996, then passed the bill by 31-0 on May 23. The *House* concurred with the Senate amendments on May 26.

Fees for hazardous waste, industrial solid waste and batteries

HB 1986 by Saunders
Effective August 26, 1991

HB 1986 imposes fees on non-hazardous industrial solid waste generation, disposal and management. It sets permit application fees of \$2,000 to \$50,000 for industrial solid and hazardous waste permits. Permit application fees must be deposited in the Hazardous and Solid Waste Fee Fund. The fund, consisting of money from fees imposed on waste generators and operators or owners of solid and hazardous waste facilities, may contain only \$4.5 million to \$6.0 million.

Fees also would be collected from solid and hazardous waste facilities for commercial or noncommercial management or disposal of waste and deposited in the Hazardous and Solid Waste Remediation Fee Fund. The remediation fund can be used for, among other things, regulation of household hazardous substances and cleanup or removal of certain hazardous spills. Fees are established to ensure that \$12 to \$16 million is collected yearly. The money distributed from the fund must be divided between the regulatory program and remediation activities.

The bill also requires wholesale and retail battery dealers who sell batteries of six or more volts to charge \$2 or \$3 for lead-acid batteries sold (depending on the voltage). The fees are to be deposited in the Hazardous and Solid Waste Remediation Fee fund.

Supporters said the bill would give the state a desperately needed, dependable way to finance cleanup of state hazardous waste Superfund sites and solid and hazardous waste regulatory programs. The new fee structure would ensure that regulatory costs are spread fairly among the different types of waste generators.

Opponents said the current rate structure is sufficient to fund the state's solid and hazardous waste regulatory programs. Many Texas businesses, large and small, would be adversely affected if they cannot afford to dispose properly of the waste they generate.

Collection of the new battery fees would be a burden for retailers and increase costs to consumers.

Legislative History. The *House* passed the bill by nonrecord vote May 7. The *Senate* amended the bill to include the battery fee provisions, then passed the bill 21-7 on May 26. The *House* concurred with the Senate amendment by nonrecord vote, one member recorded voting nay, on May 27.

Low-level radioactive waste disposal site

HB 2665 by Shelley
Effective September 1, 1991

HB 2665 requires the Texas Low-Level Radioactive Waste Authority to select a potential disposal site in a designated 350-square-mile section of southeast Hudspeth County. The authority may enter and inspect property in Hudspeth County and has the power of eminent domain. The health department has 30 days to complete its administrative review of a site license application submitted by the authority and 15 months to propose to issue or deny a license application after the administrative review. Lawsuits pertaining to selection and licensing of a site in the designated Hudspeth County area may be brought only in Travis County courts; other suits may be filed in any court.

Supporters said the bill would help settle a decade-long search for a Texas disposal site by directing the authority to locate a site in a sparsely populated, geologically and hydrologically sound area. Otherwise, lengthy legal challenges and appeals could prevent the authority from meeting federal deadlines, which could cost the state in penalties and expenditures to store current waste. This bill would not reduce or alter site requirements; the site would have to be safe and meet scientific and other criteria, and the health department would have to evaluate the site and rule on the license application. The authority needs the power of eminent domain and the right to inspect property to ensure that it can find and acquire the necessary land for a site. Travis County courts, which have extensive expertise in administrative law, should be the court of venue for suits against the authority.

Opponents said the bill would impose a political solution on a scientific issue. A low-level radioactive waste disposal site should be chosen on its own merit through the detailed, objective selection steps, not by legislative mandate. Designating a site by statute would effectively prohibit use of the legal system to challenge authority decisions. State agencies should have to request the privilege of entering private property, and property owners should be able to negotiate the sale of any land. Lawsuits regarding the site should be tried locally rather than in Austin; it is often easier, less expensive and more convenient for local entities to bring suits in local district courts.

Legislative History. The *House* passed the bill by nonrecord vote, one member recorded voting nay, on May 17. The *Senate* amended the bill to limit the authority's

power to enter a potential site and to set the deadline for the Department of Health's license ruling, then passed the bill by voice vote on May 25. The *House* concurred with the Senate amendments by 105-26 on May 26.

The **HRO analysis** appeared in the May 13 *Daily Floor Report*.

Interstate compact for low-level radioactive waste disposal

SB 553 by Sims
Effective August 26, 1991

SB 553 permits Texas to enter into an interstate compact with one or more states to accept low-level radioactive waste if the volume of waste from other states does not exceed 20 percent of the annual average of waste that the governor projects will be produced in Texas from 1995 to 2045. The compact has to be approved by the Texas Legislature, the legislatures of any other states involved and the U.S. Congress. Texas has full administrative control over the management of the site, and other states have to share in construction costs for the site and contribute towards community assistance projects for the area in which the site is located.

Supporters said an interstate compact is needed to keep the federal government from ordering Texas to accept waste from another state. Although legal opinions differ on whether or not Texas could be forced to accept out-of-state waste, if Texas enters an interstate compact, it is certain that it would not have to accept waste from any state not in the compact.

Any compact would have to be ratified by the Legislature, and Texas would be able to negotiate the terms of the compact. The provision limiting out-of-state waste would ensure that other states would not use up the capacity of the Texas dump.

Opponents said if Texas enters a compact, it might not be able legally to exclude waste from other states. Never opening the door to out-of-state waste would assure that Texas would not have to worry about someday having to slam that door shut.

Legislative History. The *Senate* passed the bill by 30-1 on April 23. The *House* amended the bill to allow the authority to contract with private entities to operate a disposal site and to require the authority to establish operator liability requirements, then passed the bill on second reading on May 16 by 95-44 and finally approved it by nonrecord vote, five members recorded voting nay, on May 17. The *Senate* concurred with the House amendments on May 21.

The **HRO analysis** appeared in the May 15 *Daily Floor Report*.

Recycling programs and incentives

SB 1340 by Parker, et al.
Effective September 1, 1991

SB 1340 creates a comprehensive recycling program. It requires a recycling market development study and a public education campaign and sets a goal to recycle 40 percent of the state's solid municipal waste by 1994. The bill sets up programs for vehicle-tire and used-oil recycling, prohibits car-battery disposal in landfills, encourages newsprint recycling, household hazardous waste collection and rubberized asphalt paving and requires a state composting program to be established by 1994. The bill requires analysis of the state's existing and potential markets for recyclable materials.

Governmental entities, with some exceptions, are required to establish recycling programs by September 1, 1991, and a strategic solid waste plan must be developed by the Health Department and updated every two years.

The bill establishes an extensive waste tire recycling program and creates a Waste Tire Recycling Fund consisting mostly of fees and penalties collected from tire dealers and waste tire processors. Retail or wholesale tire dealers are required to charge \$2 for each new tire sold on or after January 1, 1992 for passenger cars and trucks. After April 1, 1992, the Health Department will pay certain waste tire processors for shredded tires. The bill also requires the Railroad Commission in certain circumstances to issue limited common, specialized motor, or contract carrier permits to transporters of recyclables and to adopt simplified rules for granting such certificates by December 31, 1991.

Supporters said the bill would promote recycling, which would help to alleviate the waste disposal crisis. It also would provide government support to promote recycling and expand markets for recycled goods. The bill would result in a cleaner environment and would attract major recycling facilities to Texas.

Opponents said the bill would set up a new layer of state regulation and impose new fees on state businesses to encourage people to do what they are likely to do already. Market forces are creating new recycling industries that are more viable than projects required by state government. The bill would create a glut of shredded tires.

Legislative History. The *Senate* passed the bill by 25-2 May 2. The *House* adopted amendments to delete provisions concerning wallboard and yard waste recycling, require further study of wallboard recycling and composting, establish a state composting program, *allow*, rather than require, the Highway Department to give preference to paving bids that use rubberized asphalt, require the Railroad Commission to set maximum

intrastate rates for motor carriers transporting recyclable materials and issue limited carrier certificates to transporters of recyclables, then passed the bill by nonrecord vote, 11 members recorded voting nay, on May 25. The *Senate* concurred with House amendments by voice vote on May 26.

The **HRO analysis** appeared in the May 23 *Daily Floor Report*. The analysis of a related bill concerning waste tire recycling, HB 847 by Shelley, appeared in the April 11 *Daily Floor Report*.

Note. SB 2, the environmental reorganization bill passed during the first called session, made minor changes to the waste tire recycling section of the bill. HB 847, also effective September 1, 1991, contains environmental provisions similar to those in SB 1340.

Hazardous waste moratorium

SB 1099 by Carriker, et al.
Effective June 7, 1991

SB 1099 required the Texas Water Commission (TWC) and the Texas Air Control Board to suspend permitting commercial hazardous waste facilities (including cement kilns that burn hazardous waste) until rules are adopted to implement the permit guidelines in the bill. (The TWC adopted rules on October 2, 1991.) The TWC must assess the state's need for commercial hazardous waste facilities by January 1, 1992. The TWC and the Department of Health must assess the state's commercial nonhazardous solid waste capacity by March 1, 1996 (see Note.). The bill also contains provisions concerning siting, emergency response capability and waste injection wells in salt domes.

The Texas Air Control Board (TACB) and the TWC are required to develop plans and establish reasonable goals for reducing the volume of hazardous waste generated in the state, using source reduction and waste minimization. Certain generators of hazardous waste are required to submit source reduction and waste minimization plans. The Office of Pollution Prevention in the TWC is required to help industries develop and implement waste reduction plans.

Supporters said the state desperately needs a comprehensive plan to safely manage hazardous wastes. The bill would effectively stop permitting that does not take local concerns into account, and would discourage unscrupulous operators from locating their facilities in the state.

Opponents said the bill would unfairly stop permitting mid-stream, after applicants have spent time and money to conform to existing laws, when there is no documented finding of significant risk to human health or the environment. By placing unjustifiably stringent restrictions on the siting of commercial facilities, the buildup of hazardous wastes where they are generated would be encouraged.

Legislative History. The *Senate* passed the bill by nonrecord vote on April 10. The *House* considered the bill on the Consent Calendar and amended it to allow fee increases to cover increased costs and to allow evidence of noncompliance in another state, then passed the bill by 143-4 on May 21. The *Senate* refused to concur with the House amendments on May 24, and a conference committee was appointed. The conference committee report modified provisions on when the TWC could order an applicant to pay costs incurred by an affected party and when the TWC could deny, suspend or revoke a permit; it was adopted on May 27 in the *Senate* by 31-0 and the in the *House* by 144-0.

Note. SB 2, the environmental reorganization bill passed during the first called session, amended SB 1099 to provide that "recycling" by hazardous waste facilities does not include certain procedures like landfilling, incineration and deep well injection and exempts from its provisions facilities that are legitimately recycling waste. The HRO analysis of a related bill, HB 420 by Kuempel, restricting burning of hazardous waste in cement kilns, appeared in the May 13 *Daily Floor Report*.

Creating the oil field cleanup fund and fees

SB 1103 by Sims
Effective September 1, 1991

SB 1103 amends the Natural Resources Code and the Water Code to provide for the cleanup of oil field pollution and regulate oil and gas hazardous waste according to federal law. SB 1103 also eliminates the existing well-plugging fund, creates an Oil Field Cleanup Fund in its place and levies regulatory fees on the industry to finance the fund. Bonds and other forms of financial security are required for oil and gas operators. The Texas Railroad Commission (TRC) may not be held liable for damages in mitigating pollution.

A fee of 5/16 of one cent per barrel is levied on crude oil produced in-state. Additionally, a hazardous oil and gas waste generation fee is imposed annually on each operator generating waste. The amount of the fee is based on the volume of waste produced plus administrative costs. A bond or other proof of financial security is required of operators and others, including those desiring to rework, plug back, or deepen an old well. SB 1103 also establishes a federally required hazardous oil and gas waste management program.

Supporters said the existing well-plugging fund was widely recognized as being financially inadequate. The federal government has classified some oil and gas wastes as hazardous and a state program of compliance is required to comply with the federal program. SB 1103 would mitigate wastes and pollution from abandoned wells with fees borne by the industry from which this pollution originates. It also would address inland water pollution concerns left unaddressed by SB 14, the Oil Spill Prevention and Response Act of 1991.

Opponents said the funding mechanism would disproportionately burden small independent oil operators to the benefit of the major oil producers. Drilling permit fees affect smaller operators who drill 80 percent of the oil but do not control the production. Bonding requirements also discriminate against independent producers.

Legislative History. The *Senate* passed the bill by a voice vote on May 10. The *House* amended the bill, then passed it on May 23 by nonrecord vote. The *Senate* refused to concur with the House amendments on May 25, and a conference committee was appointed. On May 27 the conference report was adopted by both the House and the Senate.

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

ENVIRONMENT — WATER, COASTAL PROTECTION

Aboveground fuel storage tanks

HB 531 by Holzheuser
Effective June 16, 1991

HB 531 allows retail service stations to operate aboveground storage tanks of up to 4,000 gallons in unincorporated areas or in municipalities of up to 5,000 residents, without regard to proximity to larger municipalities. HB 531 also eliminates current restrictions on aboveground tanks at aircraft fueling facilities. The bill establishes "setback" requirements for new aboveground storage tanks at retail service stations. A service station's authority to store flammable fluids — gasoline, diesel and kerosene — in aboveground storage tanks cannot be affected by a change in city boundaries or population, but may be changed by municipal ordinance, which cannot take effect until two years after adoption.

Supporters said the huge costs associated with EPA underground storage tank regulations have been financially burdensome for small service station owners and operators, causing some small rural stations to shut down. Aboveground tanks can be rendered safe far more easily, and this bill simply would extend this less expensive option to more station owners. Municipalities could enact stricter local regulations, within reasonable limits. Aviation fuel and aircraft fueling facilities were inadvertently included in 1989 legislation regulating storage tanks.

Opponents said the bill would allow a hazard to water supplies and public safety. The number of tanks storing flammable fuel above ground would escalate. Increasing the allowable tank size would lead inevitably to larger spills, fires and environmental hazards. The bill's setback standards were devised for isolated bulk storage facilities, not public service stations. The state's Petroleum Storage Tank Remediation Fund already has alleviated the financial burden of stricter standards for underground storage tanks, so it is unnecessary to promote aboveground storage as a cheaper alternative.

Legislative History. The *House* passed the bill on April 16 by 144-0. The *Senate* adopted amendments altering the setback distance from public roads and allowing municipal ordinances to impose stricter standards, with a two-year delay, then passed the bill by 31-0 on May 15. The *House* concurred with the Senate amendments on May 17 by 137-0.

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

Revisions to the Underground Storage Tank Remediation Fund

HB 1214 by R. Lewis, Kuempel
Effective August 26, 1991

HB 1214 expands the eligibility criteria for reimbursement from the Petroleum Storage Tank Remediation Fund, establishes a sliding scale for deductibles based on the number of tanks owned and limits the liability of lenders and lien holders. The bill makes eligible for cleanup funding "spent oil" tanks, tanks storing hydraulic fluids, vehicle service and fueling facilities and properties with residual contamination from a tank. The bill also extends eligibility for payment to lenders with a lien or who foreclose on property contaminated by petroleum products from a tank. The bill allows reimbursement of corrective action expenses performed on or after September 1, 1987, moving the eligibility date back from May 31, 1989. The bill allows the Texas Water Commission (TWC) to reimburse any owner or operator for the difference between the former \$10,000 deductible and the new sliding-scale deductible.

The bill alleviates the liability of lenders solely because they hold a lien on property; if a lender assumes ownership, removes problematic storage tanks and takes corrective action in accordance with TWC rules, then the lender is not liable.

The bill increases from 2 percent to 3 percent of the fund the amount that may be expended for administrative expenses.

Supporters said the 1989 legislation establishing the storage tank remediation fund omitted owners and operators who had responded to a prior law setting up tank standards.

The \$10,000 deductible has been a hardship; lowering the deductible would enable more small-station owners to use this insurance fund. The bill also would assist property owners with "ghost tanks" — abandoned polluting petroleum storage tanks.

Opponents said HB 1214 would reduce tank owners' financial responsibility by easing access to the remediation fund. Fleet fueling facilities for trucking and shipping lines, municipalities and corporate service stations should not be rewarded with a decreased deductible when they are financially culpable and capable of bearing cleanup costs on their own. Expanding the number of owners and operators eligible for reimbursement would create an even greater draw on the fund and result in delays for cleanup reimbursements.

Legislative History. The *House* passed the bill on May 15 by 138-0. The *Senate* amended the bill to eliminate the Underground Storage Tank Advisory Committee and passed the bill by 30-0 on May 6. The *House* refused to concur with the Senate

amendments, and a conference committee was appointed. The House adopted the conference committee report, identical to the original House version, by 143-0 on May 21, and the Senate adopted the conference committee report by 31-0 on May 24.

The **HRO analysis** appeared in the April 12 *Daily Floor Report*.

Water rights/ defining a subterranean stream

HB 2329 by Hilderbran
Died in the Senate

HB 2329 would have redefined "underground stream" to exclude underground reservoirs and aquifers and would have stated explicitly that such waterways are the property of the state. "Defined underground stream" would have meant a stream "possessing all of the characteristics of a surface watercourse, including a discrete and well-defined channel, with a bed and banks, that is capable of identification by a metes and bounds description."

Supporters said the bill would merely codify common law; the legal criteria in the definition have been long-established. The bill would assist property owners in the Edwards Aquifer area by preventing further financial repercussions of the Guadalupe-Blanco River Authority suit against every person with a well drawing water from the Edwards Aquifer. The suit threatens agricultural interests in the Edwards Aquifer region, since water rights would be adjudicated on a permit basis if aquifers were declared underground streams by courts.

Opponents said the bill would legislate away the state's rights to the Edwards Aquifer. The definition of subterranean stream differs substantially from that in effect nationwide for over 100 years. Hydrological appraisal should emanate from scientific analysis and not be imposed by the Legislature. The bill would interfere with pending litigation over title to water in the Edwards Aquifer.

The state should preserve its options to avoid a federal takeover of the Edwards Aquifer. The Sierra Club is asking that a federal agency regulate pumping in the Edwards Aquifer. If the Edwards Aquifer were determined to be state-owned, then the state, rather than a federal agency, could regulate withdrawals to protect flows to the endangered Comal and New Braunfels Springs.

Legislative History. On May 21 the *House* by 68-78 rejected a motion to table the bill and passed it to engrossment by 83-63, then finally passed it by nonrecord vote on May 22. The *Senate* by 17-12 on May 26 did not adopt the motion to suspend the regular order to consider the bill by the necessary two-thirds vote.

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

Oil spill prevention and response

SB 14 by Parker
Effective March 28, 1991

SB 14, the Oil Spill Prevention and Response Act, restructures the state's oil spill prevention, response, coordination and restoration efforts and designates the General Land Office (GLO) as lead agency on prevention and cleanup of coastal oil spills. The Texas Water Commission (TWC) retains jurisdiction over hazardous waste and upland oil spills, and the Railroad Commission (TRC) retains authority over certain pollution prevention, with expanded authority over inland pipeline spills.

The GLO is authorized to purchase spill response and cleanup equipment, increase penalties and fines and fund research and development. The bill establishes a \$50-million Coastal Protection Fund, financed by a two-cent-per-barrel fee on oil, created to pay for administration, cleanup equipment, regional response centers and response costs and damages. The bill sets aside \$1.25 million annually for research programs and a maximum \$2.5 million annually for the response centers. The fund is liable for response costs and damages, except damages caused by negligence, spillers' damages, and spillers' response costs below \$5 million. The GLO may purchase and maintain \$4 million in spill containment and cleanup equipment to be housed in regional spill response centers.

Liability for response costs and third-party damages is cumulative, subject to limits based on vessel size. Offshore production facilities are subject to unlimited liability for natural resources damages and gross negligence, willful misconduct or unreasonable failure to cooperate with response and cleanup. The GLO may assess penalties and levy fines for offenses.

A Coastal Discharge Contingency Plan is to be developed by the GLO. The GLO is authorized to enter into interstate and international prevention and response compacts.

Supporters said oil spills can devastate the state's coastal environment and economy; SB 14 would institute a comprehensive state program dealing with areas not addressed in the federal Oil Pollution Act. It would promote the development of needed research for new containment technology and for training and establish regional response centers to accelerate action to cleanup spills before they spread. A single state agency needs to be in charge of spill response, and the GLO with its authority over state offshore land is the logical agency. The new fees would bolster funding for the Oil Spill Response Fund.

Opponents said the regulatory and financial burdens created by the bill might discourage the use of Texas ports, and transporters might redirect oil to refineries and chemical facilities in other states. The TWC already is the lead agency in dealing with oil and hazardous waste spills and would be a more logical candidate than the GLO to manage coastal spills. The bill would divide, rather than consolidate, authority for managing spills by making an arbitrary distinction between spills on the coast and inland spills.

Legislative History. The *Senate* passed SB 14 on March 13 by 29-0. The *House* amended the bill and passed it on March 14 by 134-0-2. The *Senate* refused to concur with the House amendments on March 20, and a conference committee was appointed. On March 27 the *Senate* adopted the conference report by 29-0, and the *House* adopted it by 144-0-2.

The **HRO analysis** of the bill appeared in the March 13 *Daily Floor Report*.

Allocation of water rights to the Rio Grande

SB 489 by Zaffirini
Died on the House floor

SB 489 would have defined as "surplus water" state water diverted from the Rio Grande under a domestic or municipal water right and then returned to the river. Surplus water would not have been counted as appropriated water or as diverted water if downstream water users were not harmed. The credit for returns would not have been extended if the water master found an insufficient supply of water to meet outstanding monthly requests.

Supporters said the bill would help relieve the over-allocation of Rio Grande water-use rights through a partial water credit-incentive to some cities for returning diverted water to the river. Currently, wastewater is not required to be returned, and users receive no credit for returns. The bill would save some cities along the Rio Grande the expense of building water treatment and storage facilities. Rio Grande water quality would not suffer degradation since discharged water is of higher quality than diverted water. Downstream users would not be harmed, and the water credit would have been extended only in times of surplus.

Opponents said this bill could threaten the rights of downstream agricultural users since cities, which have first claim on water rights, could divert water from a segment of the river different from that of their assigned water right when cashing in their 50-percent credit for returned water. SB 489 could encourage waste by allowing certain cities to avoid building waste water treatment plants and implementing conservation and re-use measures.

Legislative History. The *Senate* passed the bill by a voice vote on April 24. The *House* amended the bill to limit the water credit to municipalities in compliance with their wastewater discharge permits, to provide that cities could not exceed the average dry weather wastewater flows, to apply the bill only to the amount of water rights held by a municipality and to limit use of the credit to the annual water year in which it accrued, then rejected the bill on second reading on May 22 by 20-102-14.

The **HRO analysis** appeared in Part Two of the May 16 *Daily Floor Report*.

Conservation standards for plumbing fixtures

SB 587 by Truan, et al.
Effective September 1, 1991

SB 587 prohibits the sale, distribution or importation of plumbing fixtures that do not meet state water conservation requirements established by the bill. Among the fixtures exempted from this provision are those ordered prior to January 1, 1992. The Board of Health is to maintain a current list of plumbing fixtures that are certified by the manufacturer to meet state standards. The board may test fixtures on the list to make sure that they are accurately certified and require the manufacturer to pay for the inspection.

The bill requires the board to adopt rules for the labeling of certain plumbing fixtures, washing machines and dishwashers. Labels must include information concerning water saving measures or water use by the appliance. Administrative and civil penalties up to \$5,000 per violation are established.

Supporters said the bill would help the state to conserve as much as 40 percent of all water used indoors and reduce a family's water bill by as much as \$600 per year. The bill would reduce the demand for new water supplies and save money that would have been used for water treatment and development.

Opponents said the bill would create another unnecessary layer of bureaucracy and paperwork and promote the use of models that, in some cases, have proved unreliable. The Board of Plumbing Examiners should regulate the area instead of the Board of Health.

Legislative History. The *Senate* passed the bill by 31-0 on April 4. The *House* considered the bill on the Consent Calendar, amended it to exempt certain washing machines and dishwashers from labeling requirements and deleted criminal penalty language from the bill, then passed the bill by nonrecord vote, three members recorded voting nay, on May 24. The *Senate* refused to concur with the House amendments on May 25 and appointed conferees, then on May 27 the Senate discharged its conferees and concurred with the House amendments.

Texas Clean Rivers Act and colonias amendment

SB 818 by Barrientos
Effective June 7, 1991

SB 818 gave the Texas Water Commission (TWC) the primary responsibility for implementing and enforcing regional standards for river water quality. TWC may assess and collect fees from water and wastewater permit holders in each watershed to cover the cost of administering water management programs. River authorities of 10 counties or more and any other river authorities or water districts designated by TWC rule are required to conduct regional water quality assessments of their watersheds. The assessment will be a continuing review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials and other issues. The river authorities will submit biennial reports to TWC and Texas Parks and Wildlife Department on water quality assessment, improvement efforts and impediments to quality-enhancement efforts.

TWC also is to coordinate all wastewater discharge permits to have the same expiration date to enable simultaneous review and renewal. TWC is required to consider nonpoint source pollution, toxic materials and nutrient loading in developing state water quality standards. The Texas Water Development Board (TWDB) may award grants from the Water Assistance Fund to river authorities.

A TWDB Plumbing Loan Fund was established for colonias. Political subdivisions within border counties and those counties adopting the model rules of the Economically Distressed Areas Act are eligible for loans from the fund.

Supporters said the water quality of Texas rivers and lakes has been increasingly threatened by a wide array of pollutants and the state's rapid population growth. TWC lacks adequate resources to monitor and protect the 80,000 miles of Texas rivers and lakes. With general supervision and enforcement from TWC, river authorities and water districts could help protect Texas water resources. The bill does not alter the authority of any local government and encourages citizen involvement in the development of regional assessments. Also, a revolving loan fund is sorely needed for the colonias where many residents live in unsanitary conditions and have limited financial ability to install indoor plumbing.

Opponents said the bill would impose a tax on wastewater discharge permit holders, who already pay for their privilege. The program's higher fees also would shift use from surface water to groundwater. TWC already has water quality protection authority and could accomplish the bill's goals through intergovernmental contracts. Political subdivisions should be required to repay the colonias fund for at least a part of the plumbing loans in cases of uncollected repayments from individuals.

Legislative History. The *Senate* passed the bill on May 14 by 31-0. The *House* amended to revise the fee assessment provision and to add the provisions of SB 1195 by Montford dealing with plumbing loans for the colonias, then passed the bill on May 25 by 106-24. The *Senate* concurred with the House amendments on May 27 by 31-0.

The **HRO analysis** of SB 818 appeared in Part Two of the May 23 *Daily Floor Report*, and an analysis of SB 1195 by Montford, colonias plumbing loans, appeared in Part Three of the May 22 *Daily Floor Report*.

Coastal-erosion and sand-dune protection and beach access

SB 1053 by Brooks, et al.
Effective August 23, 1991

SB 1053 established a statewide policy on coastal erosion and sand-dune preservation and remediation. The General Land Office (GLO) is designated as the lead agency and will adopt rules to enforce coastal management policy. SB 1053 prohibits uncertified construction landward of and adjacent to a public beach if it adversely affects public access. Local governments are required to adopt consistent and certifiable beach access-and-use plans.

Coastal counties are required to establish dune protection lines and permit procedures to preserve sand dunes. Local governments are prohibited from effectively prohibiting motor vehicles from public beaches. A Coastal Conservation Council is established to review coastal permit actions of local government.

Supporters said beach erosion threatens some points of the intercoastal waterway and affects 220 of the 360 miles of state beaches. This could destroy resources and hurt the Gulf tourist industry and disrupt ship and barge traffic transporting \$20 billion in products annually.

The existing Dune Protection Act has failed to protect dunes uniformly over the state's coastal areas. Sand dunes serve as a critical habitat for unique species and serve as the first line of defense against tropical storms. Developers have built seaward of the dune line, right down to the water's edge, and blocked access to public beaches. Only two states lack a coastal zone management program. SB 1053 will tap federal funds for the state.

Opponents said SB 1053 would take too much control over local land use from local governments. It is too vague and provides no certainty about what rules and regulations might be implemented and could increase the cost of developing coastal areas.

Legislative History. The *Senate* passed the bill on May 7 by 31-0. The *House* adopted amendments to extend public beach access protection, then passed the bill on May 17 by 128-5-1. The *Senate* concurred with the House amendments on May 21 by 31-0.

The **HRO analysis** appeared in the May 16 *Daily Floor Report*.

Wetlands management and protection plan

SB 1054 by Brooks, et al.
Effective June 5, 1991

SB 1054 requires the General Land Office (GLO) and the Texas Department of Parks and Wildlife (TPWD) to jointly develop a zero-loss coastal management plan for state-owned coastal wetlands, including mitigation of wetland loss. The GLO and TPWD will certify coastal wetlands essential to the public interest, assign priorities for TPWD wetland acquisition and educate the public on wetlands.

Supporters said SB 1054 would help ensure that the state protects the existing ecosystem from encroachment. Texas has lost more than one-third of its coastal marshes since 1950. This threatens tourism and commercial fishing and jeopardizes the Texas Gulf Coast's Intercoastal Waterway; continued erosion could expose this shipping waterway to open Gulf waters, disrupting ship and barge traffic that carries \$20 billion in goods annually.

SB 1054 would affect *state-owned*, not private, wetlands by establishing the framework for a comprehensive management and conservation plan, in line with the 1989 Coastal Zone Management Plan.

Opponents said the bill went too far in its provisions on mitigation, regulation of water flows, navigation and other issues and could have an adverse impact on private land use.

Legislative History. The *Senate* passed the bill on May 7 by 31-0. The *House* passed the Senate version on May 17 by 125-8.

The **HRO analysis** appeared in Part One of the May 16 *Daily Floor Report*.

Coastal development districts

SB 1094 by Lucio
Died in House committee

SB 1094 would have allowed coastal communities by local option to create special districts with broad powers to levy property taxes and issue tax-exempt general obligation bonds. The districts could construct roads, water and sewer facilities, regulate development and mitigate adverse impacts on the environment. A nine-member advisory council and a Coastal Conservation Commission, composed of the land commissioner and the chairs of the Parks and Wildlife Department and the Water Commission, would have been created.

SB 1094 would have established procedures for creating a district, including petition by local residents. At an election to create a district, proposals to issue bonds and levy property taxes could be included. The district would have had all the powers and authority applicable to conservation and reclamation districts. A conservation district could have levied a hotel occupancy tax of up to 7 percent.

Supporters said the bill would help communities pursue environmentally sound economic development projects and give local communities the tools to regulate growth. Only the bondholders and local property owners would be responsible for a failed development. Conservation districts would assure orderly development and protection of the sensitive marshlands and prevent the intense and haphazard development that occurred on southern South Padre Island.

Opponents said SB 1094 is an attempt to obtain public subsidies for a private resort development planned by the American General Insurance Co. that could adversely affect a pristine and vital coastal area. The Laguna Madre's seagrass beds nurture a food chain that accounts for 50 percent of the Texas finfish harvest. The area is also home to at least seven endangered species. Coastal development invites damage due to storms and erosion of barrier islands. Federal law forbids the use of federal flood insurance, road and sewer grants and other development support for coastal barrier islands; this bill would allow local governments to circumvent that policy. A bond default could ruin a county's finances, and the state might have to step in and pick up the tab.

Legislative History. The *Senate* passed the bill on April 25 by 19-11. The *House* referred the bill to the Environmental Affairs Committee, where no final action was taken.

GAMING

Casino gambling on Pleasure Island in Port Arthur

HB 1524 by Collazo
Died on the House floor

HB 1524 would have allowed local voters to authorize gambling in casino-hotels on Pleasure Island, in Port Arthur. The Pleasure Island Commission of Texas would have been created to control and supervise the gambling.

Casino annual adjusted gross gaming revenue would have been taxed on a sliding scale, with 3 percent of any amount that did not exceed \$50,000 going to the commission for remittance to the state; 4 percent of amounts \$50,000 to \$134,000; and 6 percent of amounts over \$134,000. A portion of the gaming tax would have been returned to the city and county.

Supporters said casino gambling on Pleasure Island would increase tourism for the state and the Golden Triangle area, create jobs, help diversify Port Arthur's economy and provide a clean, fun source of entertainment. The state should allow a local community to decide on this form of entertainment.

It is inevitable that gambling will come to the Gulf Coast. Texas should not fall behind other states and let them reap the benefits from controlled, legalized gambling. Pleasure Island is isolated and almost unused, so casinos would not be disruptive.

Opponents said allowing casino gambling would have grave social, moral and economic costs for Port Arthur and all of Texas. Casino gambling inevitably would attract organized crime as well as increase other criminal activities. Casinos also could breed political corruption. Gambling promotes a "something-for-nothing" mentality that undermines the work ethic and thrift and leads to debt and the neglect of family responsibilities.

Casino gambling on Pleasure Island could have a *negative* economic impact on the area because the cost of infrastructure improvements would be passed on to property owners. Casinos tend to be self-contained centers with restaurants, shops and shows that would reap profits at the expense of local businesses.

Legislative History. The *House* amended the bill to set guidelines for the timing of the local government election and rules concerning fingerprint files and criminal history records, then rejected the bill by 65-74-3 on May 9.

The **HRO analysis** appeared in the *May 9 Daily Floor Report*.

Revising the Texas Racing Act

HB 2263 by Berlanga, Pierce, G. Lewis
Effective August 26, 1991

HB 2263 makes numerous changes in the Racing Act, including making the state's tax share of the takeout from horse racing a sliding scale, permitting betting at tracks on simulcast races, increasing the takeout on some greyhound betting, creating a new class of horse racing tracks and revising various rules.

The takeout structure (the amount deducted from total wagers and not paid out as winnings) was revised so that, rather than a 20 percent deduction for all types of races, the total amount deducted from a regular horse racing wagering pool is 18 percent; the total amount deducted from a multiple-two horse racing wagering pool (wagering on two horses in one or more races) is 21 percent and the total amount deducted from a multiple-three horse racing wagering pool is 25 percent.

Rather than a flat 5 percent, under HB 2263 the state receives 1 percent of the first \$100 million wagered on live horse racing in a year, 2 percent of the next \$200 million wagered, 3 percent of the next \$100 million, 4 percent of the next \$100 million wagered and 5 percent of any additional wagers. Purses receive at least 7 percent of the takeout on live regular and multiple-two wagering and at least 8.5 percent of bets on live multiple-three wagering. One percent of multiple-two and multiple-three wagering pools goes to the Texas-bred program. The percentage of the takeout left after deductions for purses, the state and the Texas-bred program goes to the tracks.

The Texas Racing Commission is authorized to allow wagering on simulcast races, which allows bettors at a licensed Texas track to bet on races televised live from other tracks. Tracks may present simulcast races on days they are not holding live races. Simulcasting horse races to greyhound tracks or greyhound races to horse tracks is not permitted.

One percent of the takeout of simulcast betting pools (from 18 percent to 25 percent of wagers on horse-race wagering and 18 percent to 20 percent of greyhound-race wagering) goes to the state; 0.25 percent to the Texas Commission on Alcohol and Drug Abuse for the prevention of problem gambling; 1 percent of multiple two- and three-bet pools to Texas-bred programs; and the rest of the takeout is divided among purses, expenses, and the sending and receiving locations, according to a contract approved by the commission.

The takeout on multiple-two and multiple-three betting on greyhound races was increased from a maximum of 20 percent to a maximum of 21 percent on multiple-two wagering

and a maximum of 25 percent of multiple-three wagering. The track will decide how to divide the increase between purses and the track.

Counties may apply for a Class 4 horse track license for not more than five days of live racing held in conjunction with a county fair livestock show. The commission may waive or defer facilities or operations standards, but not drug-testing standards, for Class 4 tracks. The number of live race days for Class 1 tracks will be decided by the commission, instead of having a minimum of 45 days. Class 2 tracks are entitled to conduct 60 days of live racing and Class 3 not more than 16 days.

The governor will designate the racing commission chair. The Travis County district court is the court with venue for judicial review of commission orders. Holders of a commission occupational license are subject to pre-race and post-race drug testing. The commission can impose penalties of up to \$10,000 for violating the racing act or commission rules. The Equine Research Advisory Committee, composed of university and industry representatives, was created to award grants for equine research. The grants are funded through the Texas-bred program and a portion of the breakage.

Supporters said lowering the state's share of the takeout and reallocating the money for purses and tracks would give investors a financial incentive to build Class 1 horse tracks and bring the state's racing tax in line with those in other states; if Class 1 tracks are built and adequately financed, the state ultimately will benefit. Simulcasting would increase interest and revenue and allow more efficient use of track facilities. The bill also would clarify imprecise wording and address questions raised about the commission's authority.

Opponents said giving the horse-racing industry a special tax break would renege on the promise made to the voters when they approved pari-mutuel wagering in 1987 that racing would be a revenue-raiser for the state. The racing industry should stand on its own rather than receive special subsidies. The voters approved *live* racing, not betting on races at other locations. Simulcasting emphasizes gambling, not the sport of racing, and could lead to off-track betting.

Legislative History. The *House* amended the bill to restrict betting on simulcast races to licensed racetracks, to establish the Class 4 horse tracks and to prohibit an auto racing facility within 10,000 feet of a horse or greyhound track in a county with a population of 1.8 million or more (Harris, Dallas), then passed the bill by 104-37-2 on April 30. The *Senate* amended the bill to allow the commission to set the number of race days for Class 1 tracks, to prohibit cross-species simulcasting, to set aside part of the simulcasting pool for the prevention of problem gambling, to require that the governor appoint the commission chairman and to increase the takeout on some greyhound wagering, then

passed the bill on May 18 by 25-6. The *House* concurred with the Senate amendments on May 22 by 94-43-1.

The **HRO analysis** appeared in the April 29 *Daily Floor Report*.

Note. The Racing Act also was amended in HB 11, second called session, to change the tax on greyhound wagering to a sliding scale. Of the first \$100 million wagered on live greyhound racing, 2 percent goes to the state; 3 percent of the next \$100 million; 4 percent of the next \$100 million; and 5 percent of any additional wagers. HB 11 also raised the purses in greyhound races from a minimum of 3.75 percent of the betting pool to a minimum of 4.7 percent.

Operation of casino gambling ships

SB 612 by Brooks
Died on the House floor

SB 612 would have permitted gambling aboard licensed day cruise ships at least three nautical miles from the Texas coastline. Casino operators, ship operators and casino ship employees would have had to be licensed annually by the Texas Department of Licensing and Regulation. Casino ships would not have been permitted to operate within a 60-mile radius of the county seat of a county in which a licensed greyhound racetrack was located if the track had operated for at least 90 days before the casino-ship operator license application was approved, excluding the Corpus Christi and Rio Grande Valley areas. A casino ship operating in a county before a greyhound track license was issued would have been permitted to continue operations.

Supporters said gambling ships already operate out of numerous Texas ports including Galveston, Freeport and Port Isabel. This bill would simply allow them to operate *closer* to shore. It would allow Texas-based gambling ships to escape federal jurisdiction and a recent U.S. attorney general's opinion by remaining in state waters. SB 612 would provide an economic shot in the arm to the sagging economies of Texas' port cities by promoting tourism and creating jobs with minimal investment by the cities. Gambling ships and dog tracks attract a different clientele; the bill would not affect a planned track in Galveston County.

Opponents said the bill was an attempt to legalize casino gambling and could lead to authorization of land-based casinos. The U.S. Justice Department has determined that gambling on cruise ships may be illegal unless they sail into international waters. Texas should not rush into a new enterprise until the confusion at the federal level is cleared up. Ship-casinos might compete for gambling dollars with a planned greyhound track for Galveston County.

Legislative History. The *Senate* amended the bill to restrict ships to a specified distance from greyhound tracks, to eliminate a provision allowing local-voter approval of casino ships in counties with greyhound tracks and to outline specific offenses, then passed the bill by voice vote, 12 members recorded voting nay, on May 20. The *House* amended the bill to limit the casino ships that could continue to operate after the effective date of the bill to those that had operated for 120 days prior to the effective date of the bill and to earmark 1 percent of the admission price to casino cruise ships for the treatment and prevention of compulsive gambling. When the bill was considered on second reading on May 24, a point of order was sustained that it violated Rule 8,

Section 13, prohibiting consideration of bills on second reading during the last 72 hours preceding the final adjournment of the Legislature.

The **HRO analysis** appeared in the May 24 *Daily Floor Report*.

GOVERNMENT REGULATION

Regulating currency exchange businesses

HB 46 by H. Cuellar
Effective September 1, 1991

HB 46 requires businesses that exchange or transmit currency to obtain an annual state license, beginning January 1, 1992. Banking institutions, securities dealers and businesses with sale-of-check licenses are exempt. Businesses that exchange currency as an incidental part of their business or to accommodate customers may request a license exemption. The Texas Finance Commission and the state banking commissioner are to regulate the licenses. The banking commissioner and the Texas Department of Public Safety are permitted to investigate violations of currency exchange laws. It is a third-degree felony (maximum penalty of 10 years in prison and a \$10,000 fine) to knowingly violate currency exchange laws. The banking commissioner may impose a civil penalty of up to \$5,000 for each violation or \$5,000 a day for continuing violations.

Supporters said regulating currency exchange houses would help curb the illegal laundering of drug money. Drug dealers pass nearly a billion dollars of illegal drug money through "casas de cambio" (foreign-currency exchange houses) and "giro houses" (wire transmission houses) in Texas each year. While these businesses may be legitimate, drug dealers use them to move money from one country to another without being identified.

Opponents said HB 46 would not make a dent in the laundering of drug money and would increase the costs of legitimate currency exchange businesses, which would pass them on to their customers. It would be an unnecessary inconvenience for retailers and hotels that exchange currency as a service to get a license exemption each year, and the banking department will be burdened by the requirement that it examine and license exchange businesses each year.

Legislative History. The *House* passed HB 46 by nonrecord vote on April 23. The *Senate* passed the House version by voice vote on May 8.

The **HRO analysis** appeared in the April 18 *Daily Floor Report*.

Regulating the real estate appraisal industry

HB 270 by A. Smith
Effective July 1, 1991

HB 270 created the Texas Appraiser Licensing and Certification Board (TALCB), an independent subdivision within the Texas Real Estate Commission. The board is composed of eight members appointed by the governor. Four members of the board must be active real estate appraisers, and four must be non-appraisers. The board must also represent a cross-section of appraisal organizations, appraisal disciplines and geographic areas. The board is authorized to adopt minimum requirements for those wishing to become licensed or certified as real estate appraisers. A commissioner employed by the board may investigate complaints and recommend administrative sanctions.

Supporters said the bill would clean up a traditionally unsupervised industry and bring the licensing and certification process for Texas real estate appraisers up to date with federal requirements. If the regulation of Texas appraisers did not meet federal standards, every real estate appraisal in the state would be thrown into question, greatly impeding the ability of financial institutions to issue loans.

Opponents said the board should include of a majority of appraisers. This sort of board format is used by other professional regulatory boards like the State Bar of Texas, the Board of Medical Examiners, the Texas Board of Public Accountancy and the Texas Real Estate Commission. Since the board's main power will be enforcement, it should be largely made up of appraisers who have the expertise and perspective necessary to evaluate the professional conduct of their peers.

Legislative History. The *House* amended HB 270 and passed the bill by 147-0 on April 11; the *Senate* increased the number of board members from six to eight, modified some of the licensing and certification requirements and required the board to employ a commissioner, then passed the bill by voice vote on May 6. The House refused to concur with the Senate amendments, and a conference committee was appointed. The conference report, which gave the commissioner investigatory powers, was adopted by both the House and Senate.

The **HRO analysis** appeared in the May 10 *Daily Floor Report*.

Texas Aggregate Quarry and Pit Safety Act

HB 451 by Brimer, de la Garza
Effective August 26, 1991

HB 451 enacts the Texas Aggregate Quarry and Pit Safety Act, which requires all pits and quarries located in close proximity to a public road to be protected by barriers. The Texas Railroad Commission is to administer and enforce the act. The commission must maintain an inventory of all active and inactive quarries and pits that are within 200 feet of a road. The governmental entity responsible for maintenance of the road next to the pit or quarry is responsible if it was abandoned or became inactive before January 1, 1991; otherwise, the current operator is responsible. Those responsible for active, abandoned, or inactive pits within 200 feet of a public road are required to construct barriers between the road and the pit or to slope the sidewalls at an angle of not more than 30 degrees.

The deadline for reporting abandoned or inactive pits and quarries is March 1, 1992 for the private sector and March 15, 1992 for counties. The act details construction standards for barriers. The responsible person bears the cost of constructing the barrier. Beginning November 1, 1991, no pits may be located less than 25 feet from the "setback distance" of a public road. Any pit that is opened after October 31, 1991 that is in hazardous proximity to a public road must file a quarry safety plan with the commission. The penalty for violating the act after due notice is \$500 to \$1,000 for the first offense and \$1,000 to \$10,000 for subsequent offenses.

Supporters said the public needs to be protected from unsafe pits and quarries located close to public roadways. This act will avert future tragedies like the one in South Texas in which a busload of school children died.

Opponents said attempts should be made to locate companies who mined pits that were inactive or abandoned before January 1991 and have them pay for making these pits safe, instead of making local taxpayers pay.

Legislative History. The *House* passed HB 451 on the Consent Calendar by 138-1 on May 17. The *Senate* amended the bill, then passed it by voice vote on May 25. The *House* concurred with Senate amendments on May 26.

Exempting tow trucks from Railroad Commission regulation

HB 848 by Clemons
Died in the Senate

HB 848, as substituted by the Senate, would have eliminated the Railroad Commission's authority to regulate tow trucks (it now regulates tow trucks between cities) under provisions of VACS art. 6687-9b, except those tow trucks that tow vehicles that weigh more than 14,500 pounds. The bill would have also required the Texas Department of Licensing and Regulation (TDLR) to require that tow trucks have at least \$500,000 of liability insurance, and permitted TDLR to establish maximum rates, safety rules and regulations for tow trucks.

Supporters said it is burdensome for tow truck operators to abide by the regulations of both the Railroad Commission and TDLR. This bill would let one agency regulate the towing industry.

Opponents said only the Railroad Commission, which regulates motor carriers, can ensure that tow trucks operate safely. The Department of Licensing and Regulation is not equipped to fully regulate motor carriers and could choose not to set rates under the bill, subjecting the public to unreasonable tow charges.

Legislative History. The *House* amended the bill to specify that if a city regulated tow trucks, it would have to require, as a condition of the permit, that the licensee could not tow vehicles unless told to by a law enforcement officer or with the consent of the owner. Towing without such consent would be grounds for suspending a tow truck operator's registration. The *House* then passed the bill by 86-51 on May 9. The *Senate* State Affairs Committee substitute provided that tow trucks towing heavy vehicles would remain under the Railroad Commission's jurisdiction, required TDLR to establish minimum insurance requirements, and permitted the department to establish rates, fares and other regulations regarding tow trucks. The *Senate* vote to suspend the regular order of business to consider the bill failed by 14-15 on May 26.

The **HRO analysis** appeared in the *May 7 Daily Floor Report*.

Regulation of private process servers

HB 984 by S. Thompson
Died in Senate committee

HB 984 would have required any person, other than a sheriff or constable, serving civil process issued by courts in a county with a population of 1.175 million or more (Harris, Dallas, Bexar) to be licensed by the secretary of state. A licensee could have served a citation or a writ of garnishment but could not have served a writ of attachment, sequestration or execution or other process providing for the seizure or detention of property. Licensed process servers or their registered agents would have been considered officers of the court but not peace officers. A license would have been suspended or revoked for a violation of the licensing act, failure to maintain required records, failure to maintain the required security deposit, refusal to permit examination of records or false or fraudulent return of service.

Supporters said the bill would allow the current system of serving civil process to continue while placing private process servers in the state's largest counties under uniform standards. The courts would benefit because process could be served by a licensed server without the need to obtain a court order under Rule 103, Texas Rule of Civil Procedure. Courts would not be required to use private process servers but would have greater assurance of their dependability should they choose that option. Counties would benefit because constables could be freed from process serving duties to focus on other duties.

Opponents said private process servers take away business and revenues from sheriffs' and constables' offices. Just because the private sector may be able to underbid a sheriff's or constable's office to serve process does not mean this important, legitimate government function should be turned over to the private sector where profit is the only motive. This bill would strip control of serving process in some counties from local courts and require the state to police the actions of some private process servers.

Legislative History. The *House* amended the bill to apply only to courts in counties with over 350,000 in population. The bill then failed to pass to engrossment by a nonrecord vote on May 2. After a motion to reconsider the vote was adopted on May 6, the *House* amended the bill to apply to courts in counties of 1.175 million or more and to delete licensing requirements of previous experience and passed the bill to engrossment by 71-65-3. The *House* on May 7 initially passed the bill on third reading

by a nonrecord vote, then reconsidered the vote and passed the bill by a record vote of 72-63-4. The *Senate* State Affairs Committee considered the bill in public hearings on May 13 and May 23 but did not report the bill.

The **HRO analysis** of HB 984 appeared in the May 1 *Daily Floor Report*.

Continuing the State Bar of Texas

HB 1186 by Hury
Effective September 1, 1991

HB 1186 continues the State Bar of Texas and amends its functions. The bill replaces the Grievance Oversight Committee with a new Commission on Attorney Discipline made up of six lawyers and six non-lawyers. This commission is required to investigate all complaints of attorney misconduct and provide an explanation to any complainant whose complaint is dismissed. The bill includes requirements for notice to all parties of any hearing and limits the use of private reprimands. The State Bar also is required to provide quarterly reports of the status of complaints. The bill provides for immunity from prosecution for both the Commission on Attorney Discipline and the Unauthorized Practice of Law Committee and for complainants and witnesses.

The State Bar is required to develop a model procedure for fee mediation and required to report by January 1, 1993 on the feasibility and desirability of a mandatory requirement that attorneys do some *pro bono* (public service) work. The bill requires that the State Bar president appoint to the board of directors four members who are female or members of a minority group. The bar is required to implement purchasing requirements in accord with general state purchasing procedures and is forbidden to use any money from mandatory dues for purchase of alcohol.

Supporters said the bill addressed problem areas, such as grievance procedures, without tampering with an attorney's right to *de novo* review of disciplinary proceedings or forbidding use of private reprimands. Proposals to repeal the prohibition of the unauthorized practice of law would aid incompetents and charlatans.

Opponents said the State Bar should be abolished because it protects attorneys in ways unavailable to any other profession. The bill's changes in the complaint procedures are mainly cosmetic; much more radical changes are necessary. Complaints should be handled by a board composed mainly of non-lawyers. *Pro bono* work should be required, and fee disputes and incompetent representation should be subject to disciplinary action.

Legislative History. The *House* adopted amendments related to immunity from prosecution, purchasing procedures, prohibition on purchase of alcohol, conflict of interest provisions regarding the board of directors and restrictions on lobbying, then

passed the bill on April 15 by nonrecord vote, two members recorded voting nay. The *Senate* amended, then passed the bill on May 10 by voice vote. The *House* concurred with the Senate amendments on May 23.

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

Licensing of marriage and family therapists

SB 181 by Brooks
Effective September 1, 1991

SB 181 established the Texas State Board of Examiners of Marriage and Family Therapists (under the Department of Health) to examine, license and regulate marriage and family therapists. Licensees must be at least 18 years old, have a graduate degree in marriage and family therapy (MFT) or a related field and two years experience in MFT, including at least 1,000 hours of clinical experience. Exemptions from the act include persons employed as marriage and family therapists by a government agency or a school, students or interns and members of other licensed professions such as physicians, attorneys, psychologists, counselors and certified social workers.

Supporters said licensing marriage and family therapists would help ensure that therapists in this growing field are qualified and trained. MFT is recognized as a separate mental health discipline by the federal government and is regulated in over 20 other states. SB 181 would allow individuals who are often licensed or certified in psychiatry, psychology, social work, counseling or another related field, as well as persons specifically trained in marriage and family counseling, to obtain specific professional credentials in MFT. By ensuring that licensed marriage and family therapists meet minimum education and experience requirements, this bill would help protect consumers, who often have no way of evaluating therapists' qualifications. This bill will cost the state nothing since the board will charge fees to cover administration of the act.

Opponents said SB 181 was unnecessary because marriage and family therapists are often licensed and certified in other fields. Any therapist who wants specific accreditation in MFT can currently obtain voluntary certification from the Marriage and Family Therapy Certifying Association (MFTCA), a part of the Texas Association for Marriage and Family Therapy (TAMFT).

Legislative History. The *Senate* passed the bill by voice vote on February 26. The *House* placed the bill on the Consent Calendar and considered a committee substitute that specified that at least 500 hours of the minimum 1,000 hours of direct clinical service experience must involve couples or families, then passed the bill by voice vote, eight members recorded voting nay, on May 21. The *Senate* concurred with the House amendments on May 25.

Continuing the Texas Board of Architectural Examiners/ Interior design

SB 429 by Green
Effective September 1, 1991

SB 429 continues the Texas Board of Architectural Examiners until September 1, 2003, changes the composition of the board and amends its statutory authority.

The bill authorizes the board to examine and register interior designers and to establish standards for their conduct. An applicant for registration must have at least six years of education and/or experience in the field of interior design *or* have graduated from a recognized interior design education program and have one year of professional experience. Those who have practiced interior design for at least six years before September 1, 1991 are eligible to register without examination. Those applying for registration before September 1, 1992 are eligible to register without examination if they have practiced interior design for six years as of September 1, 1991. Registration requirements may be waived by the board if an applicant is licensed or registered in good standing with another state with comparable requirements.

Supporters said some regulation of interior designers is necessary, since they are the only members of the primary building design team that are not registered or licensed by the state. "Dead end" corridors, improper hardware on exit doors, inadequate or obstructed exits and swinging doors that trap occupants on the wrong side are some of the potentially fatal situations that can arise from poor interior design. Registration will establish a minimum standard of education and experience as well as encourage continuing education courses for competent design practitioners.

Opponents said there is no public health or welfare need to regulate interior designers. Most interior design can be regulated by other means, such as building and fire codes. Since there have been no problems and no complaints, regulating interior designers would be an unnecessary extension of government, and it could increase costs for consumers since it would limit the amount of competition among interior designers.

Legislative History. The *Senate* passed SB 429 by voice vote, one member recorded voting nay, on May 6. The *House* changed the criminal penalty for violating interior design regulations from a class B to a class C misdemeanor, then passed the bill by nonrecord vote on May 20. The Senate concurred with the House amendments on May 26.

The **HRO analysis** of the House companion, HB 856, appeared in Part Two of the May 8 *Daily Floor Report*.

Authorizing optometrists to prescribe topical medication

SB 774 by Glasgow
Effective September 1, 1991

SB 774 amends the Texas Optometry Act to authorize licensing a new type of optometrist, a therapeutic optometrist, who would be authorized to prescribe certain medication for treatment of topical eye disorders. Therapeutic optometrists must pass an examination and receive a license from the Texas Optometry Board. Therapeutic optometrists cannot prescribe medication for the treatment of glaucoma or viral infections. They can use certain topical steroids in treating eye disorders.

Supporters said SB 774 would make quality eye care accessible to many more Texans. Poor Texans and persons in rural areas with few ophthalmologists also will benefit. Therapeutic optometrists will receive the additional education they need to prescribe topical medication after an advisory board assists the optometry board in determining exactly what requirements must be met before a person receives a license. SB 774 was agreed to by both optometrists and ophthalmologists.

Opponents said SB 774 would grant a type of medical license to optometrists who lack the training and hands-on experience with treating patients or dispensing medications that ophthalmologists obtain through four years of medical school. Inadequately supervised use of steroids can result in glaucoma, cataracts and systemic harm to the body. A board of optometrists who have little training or prescribing medicine for eye disorders would determine the educational courses that therapeutic optometrists must take. Optometrists will return every legislative session seeking expanded authority to perform medical functions that physicians with more training should be performing.

Legislative History. The *Senate* passed the bill on April 30 by a voice vote, one member recorded voting nay. The *House* amended the bill to narrow the scope of authority for therapeutic optometrists, including a ban on treatment of glaucoma, then passed the bill on May 17 by nonrecord vote. The *Senate* concurred with the House amendment on May 21.

The **HRO analysis** appeared in Part One of the May 16 *Daily Floor Report*.

Licensing and regulating employee-leasing companies

SB 1020 by Glasgow
Died in the House

SB 1020 would have required employee-leasing companies to be licensed by the Texas Department of Licensing and Regulation (TDLR). The application fee could not have exceeded \$10,000. Licensing requirements for leasing companies would have included the posting of a \$50,000 surety bond, an audited financial statement showing assets between \$50,000 and \$100,000 (depending on the number of employees leased) and a complete biography of the companies' officers. The TDLR would also have been given access to applicants' criminal history records. An employee-leasing recovery fund would have been established through the collection of an additional \$1,000 licensing surcharge. The fund would have been used to reimburse employees who suffered actual damages due to the actions of a licensed leasing company.

Licensed leasing companies would have been required to assume fiduciary responsibility for employees' benefits and keep detailed records of their employees as well as their clients. In addition, licensees would have had to fully disclose the extent of their employees' insurance coverage and benefits and whether they carried workers' compensation. The TDLR would have had the authority to conduct on-site investigations of licensed companies.

Supporters said licensing and regulating the growing employee-leasing industry would provide badly needed protection to the employees and clients of leasing firms. The industry is now marked by inadequately capitalized and unscrupulous companies. From 250 to 300 employee-leasing companies operate in Texas and handle the administration of other companies' employees, from payroll to insurance benefits. They pay the insurance premiums, retirement contributions and payroll taxes of thousands of employees. While not every firm engages in unethical behavior, many do. For example, many firms underreport their payrolls and misclassify their employees. Some companies provide their employees with insurance through shady firms that are not authorized to do business in Texas, while others simply pocket the premiums themselves, leaving employees with unpaid medical claims.

Opponents said the bill would require complex reporting procedures and excessive capital requirements and guaranty funds, forcing smaller employee-leasing firms out of business. Many of the bill's provisions would be contrary to standard business practices. For example, requiring companies to maintain at least \$50,000 in net assets would thwart

a number of budding entrepreneurs. Rather than burdening the industry with miles of red tape, the problems caused by a few companies would be better solved by enforcing laws currently on the books.

Legislative History. The *Senate* added two clarifying amendments, then passed the bill by voice vote on May 21. The *House* State Affairs Committee reported SB 1020 favorably without amendments on May 23. On May 24 the House Calendars Committee set on the daily House calendar a related bill, HB 2897 by Counts, but the session ended before the House took action on the bill.

Requiring more women's restrooms in certain buildings

SB 1203 by Barrientos
Died in conference committee

SB 1203, as passed by the Senate, would have required publicly and privately owned sports and entertainment arenas, stadiums, community and convention halls, specialty event centers and amusement centers built or substantially remodeled after January 1, 1992, to have not less than two women's restrooms for every men's restroom. A different ratio could have been used if it were based on objective criteria such as the type of facility or event. The restroom facilities could have been permanent or temporary. The bill would have specifically excluded bowling centers, historic buildings, elementary or secondary schools, churches, hotels and restaurants.

Supporters said allowing extra restroom facilities for women would create "potty parity" between the sexes. Studies show that women can take up to three times as long as men to use the restroom, especially when accompanied by small children. Women often have to stand in long lines to use the restrooms at large public events. Some women have even had to sneak into the men's restroom. SB 1203 would help end institutional sexism by requiring architects and builders to do the right thing.

Opponents said the bill was just more legislative meddling in private affairs. Because of the financial strain of having to install new restrooms, there probably would have been a decrease in the number of men's restrooms to meet the bill's standards, rather than an increase in the number of women's restrooms.

Legislative History. The *Senate* amended SB 1203 by adding bowling centers to the list of exempted facilities, then passed the bill by a voice vote on April 17. The *House* considered the bill on the Consent Calendar and amended it to change the required ratio of women's to men's restrooms from "at least 2:1" to "at least 3:2," then passed the bill by non-record vote on May 24. The Senate did not concur with the House version and a conference committee was appointed. The bill died in conference committee when the Senate conferees refused to accept language proposed by House conferees that would have required a ratio of *not more* than three women's restrooms for every two men's restrooms.

HEALTH

Removal of organs without prior approval or family consent

HB 271 by R. Lewis
Effective September 1, 1991

HB 271 allows medical examiners to permit removal of the organs of persons who are not declared organ donors when a family member cannot be contacted to give consent within four hours after the person's death. Persons who are involved with harvesting organs under such circumstances are exempt from civil or criminal liability. A declared organ donor's organs may be removed without obtaining permission of another person. (Under previous law organs of a declared donor could not be harvested without permission from the family.) HB 271 also allows persons under 18 to be declared organ donors, but their organs may not be harvested without parental consent if they die before reaching 18 years old. A organ donor symbol will be displayed on the front of driver's licenses or personal identification cards, instead of on the back side.

Supporters said the bill clarifies that a declared organ donor's organs may be removed for use as transplants or other purposes in emergency situations when family members cannot be contacted immediately. The bill would protect doctors from legal liability in such situations and would expand the limited supply of life-providing organs, which must be removed quickly after death in order to be of use. If a person is not a declared organ donor, organs could be removed only after every reasonable effort has been made to contact the family within four hours of death and permission to remove the organs has been given by the medical examiner.

Opponents said taking organs from a person who is not a declared organ donor or has no identification is an invasion of privacy and personal rights. The assumption should continue to be that persons who have expressed no prior approval do not wish their organs to be removed without family permission. At the very least, driver's licenses and personal identification cards should carry a symbol indicating the wishes of persons who do not want their organs harvested.

Legislative History. The *House* passed HB 271 on the Consent Calendar by nonrecord vote, one member recorded voting nay, on May 17. The *Senate* passed a substitute by voice vote on May 26. The *House* concurred with the Senate amendments by nonrecord vote on May 27.

Choosing pharmacists under health insurance policies

HB 486 by Stiles
Effective September 1, 1991

HB 486 prohibits denying a pharmacist or pharmacy that agrees to the requirements of a State Board of Insurance-regulated health insurance policy the right to participate as a contract provider. Health insurance policies that cover pharmaceutical services are prohibited from limiting or interfering with a beneficiary's selection of a pharmacy or pharmacist to provide services under the policy. Policies may not require a beneficiary to obtain specific quantities of pharmaceutical products, except to limit the covered quantity. HB 486 expires August 31, 1993.

Supporters said the bill would allow consumers to select the pharmacy of their choice. Restrictions and cost disincentives on pharmacy use by health insurance policies sometimes force consumers to choose a designated pharmacy for economic reasons at the expense of their health. Requirements that exclude pharmacists from health insurance plans create a barrier to fair competition and can help drive local pharmacists out of business. Local pharmacies should be able to compete on an equal footing with other pharmacies by having a guarantee that beneficiaries have the right to choose local druggists if they wish.

Opponents said that by interfering with the coverage of health insurance policies, HB 486 would drive up health insurance costs and allow certain pharmacists to continue inflating their prices at the expense of consumers and policyholders in general. Group insurance providers select the most cost effective pharmacies in order to keep premium costs down. Prohibiting a group insurance provider from making that choice (and offering an incentive to patients to use the most cost-effective pharmacies) would force health insurance rates to rise for employers as well as employees.

Legislative History. The *House* passed the bill on March 26 by nonrecord vote after amending it to include preparing and dispensing home intravenous therapies under pharmaceutical services, to specify that the bill does not prohibit some kinds of financial incentives or pharmacy card programs and to provide that it does not apply to plans under federal regulation and to add an expiration date for the bill. The *Senate* amended the bill to delete the amendment including home intravenous therapies under pharmaceutical services and passed it on April 17 by voice vote. The *House* concurred with the Senate amendment on May 10.

The **HRO analysis** appeared in the March 25 *Daily Floor Report*.

Creating a Medicaid Analysis and Cost Control Office

SB 38 by Brooks and Montford
Effective May 24, 1991

SB 38 establishes a centralized Medicaid authority — the Medicaid Analysis and Cost Control (MACC) office — to oversee the state Medicaid program in order to maximize federal aid.

Supporters said the state runs many separate programs that could be eligible for federal aid but are financed entirely with state and local dollars. The MACC office would improve Texas' Medicaid finances by coordinating the budget decisions made by the health and human services agencies, medical schools and local governments that run these individual health-care programs.

Opponents said the bill would add another unnecessary level of state bureaucracy.

Legislative History. The *Senate* passed the bill on April 10 by 31-0. The *House* adopted minor amendments and passed the bill on May 9 by 118-22. The *Senate* concurred with the House amendments on May 10 by 31-0.

The **HRO analysis** appeared in the May 8 *Daily Floor Report*.

Court fee to fund the Texas Rehabilitation Commission

SB 195 by Ratliff, Brooks, et al.
Effective September 1, 1991

SB 195 imposes new court costs on persons convicted of traffic offenses. A \$5 fee is imposed on each conviction of a speeding offense or for riding a motorcycle without a helmet. A DWI conviction carries a fee of \$25. Fee revenue is deposited in either the city or county treasury and remitted quarterly to the state comptroller. The city or county may retain the interest and 10 percent of the funds, as a service fee.

The fees finance the Comprehensive Rehabilitation Fund, which was established in the state Treasury. Money in the fund is appropriated only to the Texas Rehabilitation Commission for rehabilitative services. Any unexpended balance in the fund above \$500,000 at the end of a fiscal year is transferred by the comptroller to the General Revenue Fund.

Supporters said the higher fees would help deter offenses and help those unable to pay the high cost of rehabilitation allowing them to return to productive lives. Many head and spinal injuries are caused by speeders or drunk drivers or from riding without a helmet, and 50 percent of those with head injuries have insufficient funds to obtain rehabilitation.

Opponents said a rehabilitation program should be financed with state or federal funds, not money transferred from cities and counties, and nothing ensures that the money would be spent on the victims of traffic accidents. Court costs and fines are already very high; this fee would hit those with lower incomes especially hard and would not effectively deter speeding or drunk driving.

Legislative History. The *Senate* passed the bill by voice vote April 2. The *House* amended the bill to also add a \$5 fee for each conviction of driving a motorcycle without a helmet, then passed it by nonrecord vote on April 29. The *Senate* concurred in *House* amendment by voice vote on May 1.

The **HRO analysis** of HB 621, the companion bill, appeared in the April 25 *Daily Floor Report*.

HIGHER EDUCATION

Expanding UT-Permian Basin to a four-year institution

HB 277 by Watkins
Effective September 1, 1991

HB 277 allows the University of Texas System board of regents to make UT-Permian Basin a four-year undergraduate school rather than an upper-division-only institution. Freshman and sophomore enrollment is limited for the first two years after the school changes status.

Supporters said the population of the Permian-Basin area justifies a four-year university to increase higher education opportunities in the area. It will actually save the state about \$350,000 a year because the funding formula for four-year schools is less than that of two-year schools.

Opponents said a four-year school will cost the state money in the future and is unnecessary since the area has three excellent junior colleges. Expanding the institution is an idea more linked to local economic development and prestige than to a sound statewide education plan.

Legislative History. The *House* passed the bill by nonrecord vote, five members recorded voting nay, on April 17. The *Senate* passed the bill by voice vote, three members recorded voting nay, on May 8.

The **HRO analysis** appeared in the April 16 *Daily Floor Report*.

Refunding college tuition and fees to active-duty military

SB 63 by Ellis, et al.
Effective April 5, 1991

SB 63 requires state colleges and universities, beginning with the summer 1990 semester, to offer three options to students who withdraw from school because of a call to active military service. Students can have their tuition and fees refunded, be given an incomplete grade with the designation "withdrawn military" on their transcripts, or, at the instructor's option, receive a final grade or credit for completion of a substantial amount of the course and demonstration of sufficient mastery of the work.

Supporters of the bill said students who are called to serve their country should not be financially penalized by the loss of tuition and fees. This bill would help relieve the financial burden some students experienced when called to active duty because of the Persian Gulf conflict. An "incomplete" mark often requires students to finish courses in a specified length of time. This bill would not create a financial burden on colleges and universities; estimates of affected guard members and reservists number only in the hundreds, among the approximately 790,000 students who attend Texas public colleges and universities.

Opponents of SB 63 said the Legislature should be careful about changing laws to give preferred treatment to special groups on the basis of a narrow set of circumstances. Such narrow exceptions have a tendency to become broader as other groups seek similar privileges. It might be better to allow schools the flexibility to determine individually how to handle students called to active duty.

Legislative History. The *Senate* passed the bill 28-0 February 11. The *House* amended the bill to give students the option of receiving a "withdrawn military" designation for an incomplete grade and to eliminate the requirement that in addition to demonstrating sufficient mastery a student attend at least half of the semester in order to receive credit, then passed the bill on March 14 by 129-0. The *Senate* concurred with the House amendments on March 20.

The **HRO analysis** of the House companion bill, HB 303, appeared in the February 21 *Daily Floor Report*.

Proprietary school regulation revisions

SB 926 by Haley
Died in the House

SB 926, as substituted by the Public Education Committee, would have set guidelines and standards for the operation of proprietary schools. The provisions covered licensing, entrance requirements, student recruitment, enrollment contracts, school catalogs, course length, curriculum, completion rates, loan counseling, school records and financial regulations and reports. The bill would have also brought under similar regulation security officer schools (now regulated by the Texas Board of Private Investigators and Private Security Agencies); massage schools (regulated by the Department of Health); schools of mortuary science (regulated by the Texas Funeral Service Commission); barber schools (regulated by the State Board of Barber Examiners); and private beauty schools (regulated by the Texas Cosmetology Commission).

All proprietary schools would have been subject to licensing by the state commissioner for education and have to follow uniform Texas Education Agency (TEA) regulations.

Annual fees paid by schools would have been based on individual schools' gross tuition. A newly created school fund advisory board would have helped determine the fees and monitored the Proprietary School Fund. The Proprietary School Fund would have been used for administration of the Proprietary School Act, the cost of teachouts (the cost of placing a student of a school that closes in a comparable program), tuition recovery and student refunds not made by schools and the Texas Guaranteed Student Loan Corporation (TGSLC) losses incurred after October 1, 1990 on loans made in either the lender-of-last resort program or on loan defaults that were not reinsured 100 percent by the U.S. Department of Education.

Supporters said the fragmented approach to proprietary school licensing hinders effective regulation. Guidelines should be placed in statute. Many of the provisions of the bill are derived directly from the recommendations of the Joint Interim Committee on Proprietary Schools. The provisions in this bill should not hurt any well-run solvent proprietary schools.

A large number of defaults on loans to students in Texas proprietary schools has resulted in the federal government only insuring 80 percent of some loans, requiring the TGSLC to pay lenders the remaining 20 percent of some loan defaults.

Opponents said TEA already has authority to implement many of the provisions of the bill. Schools will have to spend time and resources to meet the detailed regulations in the bill.

The cost of the administration of the Proprietary School Act, tuition refunds and teachouts should not be lumped together in a fund to pay for loan losses. The default rate on proprietary school loans may be high, but the total dollar amount is a drop in the bucket of all loan defaults.

Legislative History. The *Senate* approved the bill by voice vote May 1. The *House Public Education Committee* reported the bill on May 15; the *House Calendars Committee* placed on the Major State Calendar, but the House did not consider the bill.

The **HRO analysis** of SB 926 appeared in the May 24 *Daily Floor Report*.

Notes. Article 12 of the committee substitute for HB 2 by Glossbrenner, Watkins and Delco, first called session, contained proprietary school regulations similar to those in the substitute for SB 926. HB 2 did not include regulations for schools of mortuary science and specified that schools with high default rates would have paid higher annual fees to the proprietary school fund. HB 2 died in conference committee. HB 2 was analyzed in the July 23 *Daily Floor Report*.

Degree-granting status for UT-Pan American at Brownsville

SB 1050 by Lucio
Effective September 1, 1991

SB 1050 provides for an upper-division, degree-granting institution on the campus of the UT-Pan American center at Brownsville. The university may teach only upper-division and graduate courses but may enter into a partnership with Texas Southmost College to teach lower-division courses, occupational, or technical courses.

Supporters said the bill would authorize creation of a four-year institution of higher education in Brownsville, by giving the University of Texas at Brownsville general academic standing and allowing it to enter into partnership status with Texas Southmost College. Students no longer would have to study their first two years at Texas Southmost College and transfer to the University of Texas Pan American-Brownsville, but could attend both institutions as if they were one. This change would require no additional state funding.

Opponents said that an additional degree-granting institution is not needed since the Brownsville area already is adequately served by the local junior college and the UT-Pan American center and by UT-Pan American in nearby Edinburg.

Legislative History. The *Senate* passed SB 1050 by voice vote on April 17. The *House* passed the bill on the Consent Calendar by a nonrecord vote on May 17.

INSURANCE

Revising regulation of the insurance industry

HB 2 by Cavazos, Stiles et al.
Effective September 1, 1991

HB 2 combines the board, the commissioner, officers and employees of the State Board of Insurance into the Texas Department of Insurance. The commissioner administers the department under the supervision and direction of the board, which continues to be the policy-setting body. The method of appealing board decisions is changed from *de novo* (new trial barring lower court's evidence) to substantial evidence (appellate court's review is limited to evaluating the lower court's decision).

The Division of Consumer Protection was changed to the Office of Public Insurance Counsel and made a separate state agency. The counsel is authorized to oversee all lines of insurance and to appeal board decisions.

Between March 1, 1992 and December 31, 1995 (see NOTE), insurers can charge rates for motor-vehicle and personal property insurance, within a range of rates set by the board for each of these markets of insurance, and starting October 1, 1991 may set their own rates for general liability and commercial property insurance.

Among other provisions, the bill creates an Insurance Fraud Unit within the department to enforce anti-fraud laws. The attorney general, rather than the board, may seek an injunction against an insurer for unfair practices, and the bill increases fines to \$10,000 per violation. The bill eliminates the exemption from state antitrust laws for insurance companies. The bill requires insurers to acknowledge receipt of policyholder claims and pay them promptly. Insurers must write policy forms in plain language. Insurers leaving the Texas market must file a withdrawal plan; they will be barred from re-entering the market for five years. Coastal property owners may obtain windstorm insurance more easily and at lower rates, but new coastal developments are not covered. A consumer hot line is established in the department to provide insurance information to the public and the largest insurers are required to maintain a toll-free number for consumer complaints and information.

Owners of motor vehicles must show proof of minimum liability insurance whenever their vehicles are registered or inspected and whenever they obtain or renew their driver's license. The fine for failure to maintain financial responsibility was increased from a minimum of \$75 to a minimum of \$175 and a maximum of \$350 for a first offense and for repeat offenses the fine was increased from a minimum of \$200 to a minimum of \$350 and a maximum of \$1,000 and impoundment of the vehicle for up to 150 days.

Supporters said the bill would put more teeth into regulation of the insurance industry and give consumers an active voice in industry oversight. It would help stabilize skyrocketing insurance rates and ensure the continued solvency of insurance companies at a time when state auditors have concluded that at least 283 insurance companies in Texas are in financial trouble. They said the bill would tackle insurance problems in a just and equal compromise that would benefit all interested parties.

The stricter provisions for mandated auto liability insurance will help restrain premium increases by preventing insurers from having to cover the costs of damages caused by uninsured motorists.

Opponents said the bill falls short of genuine insurance reform. It would expand the insurance industry's ability to raise rates without adequately balancing consumer needs. Under the rate flexibility band, insurers could subject consumers to arbitrary treatment. Giving insurers control over policy forms would allow them to confuse consumers. Application of the antitrust laws to insurers would be nullified by other provisions in the bill and do nothing to reduce insurance rates. Also, the bill has not made adequate provision for the cost and availability of insurance for uninsured motorists who would have to obtain insurance in order to register or inspect their vehicles or to obtain or renew a driver's license. Other Opponents said that the insurance industry should not be brought under the antitrust laws. The Insurance Code already provides for the unique circumstances under which the insurance industry operates and provides price-fixing, boycotts and other anti-competitive behavior.

Legislative History. The *House* passed the bill by 143-0 on May 2. The *Senate* amended the bill, then passed it on May 26 by 30-0. The *House* concurred with the Senate amendments by 142-4-1 on May 27.

The **HRO analysis** appeared in the May 1 *Daily Floor Report*.

Note. During the second called session, the Legislature enacted HB 62 by Counts, et al., which changed some of the effective dates in HB 2 and made various other revisions. The start of the trial period for rate deregulation for general liability and commercial property rates was changed from September 1, 1992 to October 1, 1991. The trial period for flexible rates for motor vehicle and personal property insurance will begin on March 1, 1992 rather than September 1, 1992. (For additional changes, see HRO Special Legislative Report Number 173, *Summary of 1991 Special Session Legislation*, October 24, 1991.)

Limited group health insurance for small employers

HB 532 by Taylor
Died in Senate committee

HB 532 would have permitted employers with three to 50 employees to offer "basic" group health insurance policies that would be exempt from all rules mandating benefits, coverage and providers. The policies would have had to include minimum coverage of 20 days' inpatient hospital care, medically necessary outpatient hospital care, emergency care and four physician office visits per year.

Supporters said the bill would help the three million Texans who do not have any health insurance to obtain minimum coverage, increasing their access to basic, necessary health care. The majority of uninsured Texans are working adults and their families, who usually work in the fast-growing retail trade and service sector of the state economy in which many small-sized businesses do not subscribe to group health insurance plans.

Opponents said the "basic policy" approach incorrectly assumes that mandated coverage is directly responsible for the inability of small businesses to offer group health insurance. A better way to minimize health-insurance costs would be to target the prices charged by health-care providers, through limits on reimbursement, or by limiting industry practices that discriminate against small employers.

Legislative History. The *House* adopted amendments, including a provision that enrollees would not be limited to using certain contracted physicians and providers, then passed the bill on April 11 by nonrecord vote, one member recorded voting nay. The *Senate* on April 15 referred the bill to the Economic Development Committee, where no final action was taken.

The **HRO analysis** appeared in the April 10 *Daily Floor Report*.

No-fault auto liability insurance

HB 583 by Tallas, et al.
Died in Senate committee

HB 583 would have required motor vehicle insurance policies to cover economic loss from bodily injury suffered in motor vehicle accidents, up to \$20,000 per person, regardless of fault. Covered persons could not have been held liable for economic loss within the limits or for non-economic loss for other than serious injuries. Insurers would have had 30 days from the date of receiving proof of loss to pay benefits. Policies would have had to allow claimants to settle benefit disputes through arbitration. A mechanism would have been provided to appeal insurer-arbitration rulings to district court, which would have been under the substantial-evidence rule; the judge could have reversed an arbitration ruling only upon a finding that the arbiter's award was arbitrary and capricious, obtained by corruption, fraud or misrepresentation or not based on substantial evidence.

Supporters said the bill would reduce auto insurance rates, encourage motorists to purchase auto insurance and provide meaningful coverage for consumers. They said cutting the courts out of the process would avoid the litigation expenses encountered under current law and claimants could receive claims quicker and recoup a larger portion of their premiums.

Opponents said the bill would do nothing to guarantee any reduction in rates. Rather, it would just block a person's right to sue while still allowing rates to increase.

Legislative History. The *House* passed the bill to engrossment by 80-65 on May 20, then on third reading on May 22 by nonrecord vote. The *Senate* referred the bill to the Economic Development Committee on May 23, which took no further action.

The **HRO analysis** appeared in the May 17 *Daily Floor Report*.

Texas Child-Care Facility Liability Pool

HB 1083 by Linebarger, et al.
Effective August 26, 1991

HB 1083 creates the Texas Child-Care Facility Liability Pool, which offers up to \$300,000 of liability insurance to child-care facilities and their officers and employees. **Supporters** said liability coverage for child-care centers is necessary to protect the facilities and the families that use them, yet it is difficult to obtain and is becoming prohibitively expensive. HB 1086 would create a fund supported by premiums paid by child-care centers, at no cost to taxpayers.

Opponents said the coverage limit was set too high. A state-created liability pool represents state intrusion into the marketplace.

Legislative History. The *House* passed the bill by nonrecord vote on April 15. The *Senate* amended the bill to permit state agencies that operate day-care programs to purchase liability insurance, then passed the bill by 30-0 on May 22. The *House* concurred with the Senate amendment on May 24 by nonrecord vote, five members recorded voting nay.

The **HRO analysis** appeared in the April 12 *Daily Floor Report*.

Revisions to title insurance regulations

HB 1247 by Counts
Died in Senate committee

HB 1247 would have limited who could be compensated for title insurance business services by defining the term "closing a transaction" to include only the investigation of title instruments before the actual issuance of the title policy. HB 1247 would have delegated rule-making authority to the State Board of Insurance to establish an "agent's promulgated premium," a percentage of the gross premium to be retained by a title insurance agent. Title policies could have been issued only by licensed title insurance agents with abstract plants in the real property's county, except in special cases. The bill also would have changed some licensing requirements.

Supporters said the bill would correct the problem of "home-office issues" that arose with the Texas real estate boom and subsequent bust. A loophole in current statutes allows a title insurance company to issue a policy directly if all licensed title agents in the county of the property refuse to provide title evidence, as long as the company obtains the best tile evidence possible. Underwriters have issued policies without information from experienced local title agents.

Opponents said HB 1247 would result in title insurance monopolies in a number of rural counties where business would be given to agents strictly because of their geographic location. Purchasing superfluous services would lead to inefficiency and would increase the cost of title insurance. The bill could have led to the cancellation of contracts between underwriters and a number of agents in rural counties, regardless of whether parties were currently satisfied.

Legislative History. The *House* passed the bill on second reading May 13 by 85-54-4 and on May 14 passed the bill by a nonrecord vote, with two members recorded voting nay. The *Senate* referred the bill to the Economic Development Committee, where it failed to receive an affirmative vote.

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

LOCAL REVENUE

Property tax exemption for veterans groups

HB 30 by Willy
Effective August 26, 1991

HB 30 exempts from property taxes property owned by congressionally chartered, nonprofit organizations of members or veterans of the armed forces of the United States or its allies. The exemption applies to buildings and property owned by the organizations if the property is not used to produce revenue or gain. Occasional renting of the property for other nonprofit activities will not cause the loss of the exemption as long as the proceeds are used for maintenance and improvement of the property.

Supporters said HB 30 would create a uniform, statewide property-tax exemption for legitimate veterans organizations, eliminating uncertainty for many local jurisdictions that would prefer to grant the exemption. The bill simply would implement a constitutional amendment approved by the voters in 1989. Nonprofit veterans organizations deserve a tax exemption not only because of their charitable contributions to the community but also in recognition of the sacrifices made by their members serving their country. Veterans groups do not own enough property to make this exemption a burden on any local taxing entity, but the tax exemption would significantly help the organizations. Limiting the exemption only to groups recognized by the U.S. Congress would help guarantee that the exemption goes to qualified, legitimate groups.

Opponents said the Legislature should be extremely cautious about granting statewide tax exemptions for special interest groups, however worthy. The existing tax exemption for charitable groups is adequate to assist those organizations devoted primarily to worthwhile benevolent activities. Buildings should not be exempt from property taxes merely because they are owned by a veterans group; their purpose and use should be the deciding factor, as it is under current law in granting a tax exemption for property used exclusively for charitable purposes.

Legislative History. The *House* passed the bill by 127-1-2 on March 14. The *Senate* amended the bill to clarify that it refers to property owned by the post or chapter, then passed the bill by voice vote on May 8. The *House* concurred with the Senate amendments on May 10.

The **HRO analysis** appeared in the March 13 *Daily Floor Report*.

Agricultural appraisal for land used for wildlife management

HB 1298 by Berlanga
Effective January 1, 1992

HB 1298 allows land used for wildlife management to be appraised as agricultural land, thereby qualifying for a property tax exemption. Land is considered used for wildlife management if on January 1, 1992 it is appraised, or eligible to be appraised, as qualified open-space land and used in specific ways to propagate a sustaining breeding population of indigenous wild animals to produce a harvestable surplus of those animals for human uses including food, medicine or recreation.

Supporters said HB 1298 would encourage landowners to provide a habitat for wildlife by bringing that use under the agricultural-use tax exemption. Those desiring to provide habitats for useful wildlife should be eligible for the same tax break as owners of agricultural land used for livestock. This bill would help eliminate the tax dodge of raising a few cattle, sheep or goats in order to qualify for an agricultural-use appraisal. Since most of the land that would qualify as wildlife management areas already supports some minimal agricultural activity in order to fall under agricultural appraisal, this bill would have very little, if any, effect on local property-tax collections.

Opponents said broadening the agricultural-use tax break would result in a loss in tax revenue for numerous local taxing authorities. In this time of fiscal difficulty, the tax rolls should not be pared, especially since the burden removed from a few rural landowners would be shifted to other taxpayers. Even though the land eligible for this tax break may be a small percentage of all the currently exempt agricultural land, it still amounts to millions of acres. Expanding the agricultural-use definition to include recreational and other uses would make almost any request for an ag-use exemption difficult to deny.

Legislative History. The *House* passed the bill by nonrecord vote on May 9. The *Senate* adopted a technical amendment, then passed the bill by voice vote on May 22. The *House* concurred with the Senate amendment on May 24.

The **HRO analysis** appeared in the April 25 *Daily Floor Report*.

Collection of delinquent property taxes

SB 135 by Tejada
Died in the House

SB 135 would have reduced the amount that a private attorney could be compensated by a taxing unit for collecting delinquent taxes from 20 percent to 15 percent of the tax. It would also have allowed local taxing units to recover from delinquent taxpayers the actual costs of tax collection efforts of their full-time staff attorneys.

Supporters said local government taxing units currently can contract for the collection of back taxes with law firms, which earn their profit from an additional penalty imposed on the taxpayer; since taxing units that use in-house attorneys cannot add any extra penalty to cover their costs, many local governments contract with private firms. There have been allegations of misconduct involving some of these firms as they seek lucrative collection contracts from local taxing units and protect their business from legislative restrictions. SB 135 would give local governments an incentive to use staff attorneys to collect delinquent taxes by allowing them to assess an additional penalty to cover their costs.

Opponents said local governments contract with private firms for tax collection because the firms have demonstrated that they can do a better job than government attorneys. The bill would give too much of an incentive to taxing units to keep the business themselves, even at the cost of lower tax collections. Other opponents said the House committee substitute for the Senate-passed version stripped much of the incentive for local taxing units to collect delinquent taxes rather than hire an outside attorney.

Legislative History. The *Senate* passed SB 135 on April 9 by a voice vote (five members recorded voting nay, one recorded voting present, not voting); the *House Ways and Means Committee* reported a committee substitute that would have capped the penalty at a taxing unit's actual costs; the bill was placed on the Major State Calendar on May 24, but was not considered by the House.

The **HRO analysis** appeared in the May 24 *Daily Floor Report*.

PARKS AND WILDLIFE/ ANIMALS

Mandatory sterilization of animals adopted from animal shelters

HB 948 by Danburg
Effective January 1, 1992

HB 948 requires that dogs or cats adopted from animal shelters in cities with populations over 25,000 be sterilized or that the new owner agree in writing to have the animal sterilized. The requirement applies to public and private shelters, pounds and humane organizations, but not to animals captured and returned to their owners. HB 948 outlines requirements for sterilization agreements, which must include a sterilization deadline. Owners must notify the shelter within seven days of the sterilization date that the animal has been sterilized. If a shelter does not receive the required notice by the seventh day after the sterilization date, it must file a complaint against the owner and could reclaim the animal. A violation of HB 948 is a class C misdemeanor (maximum penalty of a \$500 fine).

Supporters said HB 948 would help curb the population of dogs and cats in larger Texas cities. The lack of private initiative to sterilize animals in some cities demonstrates the need for a mandatory requirement. It is more humane to stop the animal population from growing than to have to destroy animals. Almost 600,000 unwanted animals are euthanized annually in Texas. HB 948 would not financially burden shelters because the cost of sterilizations can be built into adoption fees, and it costs less to sterilize an animal than to euthanize one. Most shelters keep records on a monthly basis so it would not be difficult for shelters to track sterilization deadlines. Texas veterinarians would not lose business because the bill requires that sterilizations be done by vets licensed by the state board or by full-time students working under a state-licensed vet.

Opponents said decisions about animal sterilization should be left to individual shelters or to local municipal regulation, not set in state law. This bill would raise costs for shelters, which would likely have to increase adoption fees, resulting in a decrease in adoptions and an increase in the number of animals that must be euthanized. HB 948 would be difficult to enforce.

Legislative History. The *House* amended the bill to require shelters to file complaints against owners who do not verify sterilization by the deadline, to change the deadline from the 14th to the seventh day after the sterilization date, and to eliminate shelters from

criminal liability under provisions of HB 948, then passed the bill by non-record vote on April 17. The *Senate* approved SB 948 on the Local and Uncontested Calendar by 31-0 on May 21.

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

User fees and permits for state parks

HB 1207 by Kuempel
Effective September 1, 1991

HB 1207 permits the Parks and Wildlife Department to require that one person in each vehicle that enters land open to the public and under the control of the department possess an annual conservation permit. For certain activities and entrance to wildlife management areas, state natural areas or lands that have not been fully developed, *each* person may be required to possess a permit. (The fee, which cannot exceed the fee for a combination hunting and fishing license, has been set by the department at \$25.) Most of the fee is to be spent on state lands under the department's control, but a portion may be credited to an interest and sinking fund (Fund 965). Using land without a permit is a class C Parks and Wildlife misdemeanor, punishable by a fine of \$25 to \$500.

Conservation permits are not required for persons to enter a park for day use only or for Washington-on-the-Brazos or San Jacinto state parks or to attend music or theater at Galveston or Palo Duro state parks. A conservation permit is not needed by a hunter who possesses a type II hunting permit. The department may grant to conservation permit holders discounts on other mandatory entrance and use fees.

Supporters said the bill would help the Parks and Wildlife Department become user-funded and end its dependence on general revenue. Non-consumptive park users, such as hikers and birdwatchers, outnumber hunters and fishers and should pay to protect the state's resources.

Opponents said the bill would saddle members of the public with yet another charge for the use of parks that their tax dollars already support. Parks should be for people of all economic levels. Non-consumptive users do not use up the state's resources like hunters and fishers do.

Legislative History. The *House* amended the bill to clarify that a person hunting on department land, and who possesses a type II hunting permit, would not need a conservation permit, then passed the bill by 95-34 on April 18. The *Senate* adopted amendments to exempt certain parks from permit requirements, allow the department to grant discounts on park fees to conservation permit holders and permit a portion of the fees to go to an interest and sinking fund, then passed the bill by voice vote on May 21. The *House* concurred with the Senate amendments by nonrecord note, one member recorded voting nay, on May 23.

The **HRO analysis** appeared in the April 17 *Daily Floor Report*.

Tags and fees on crab traps

HB 1425 by Jackson
Effective September 1, 1991

HB 1425 requires anyone placing in public waters a crab trap that is not for personal use to pay a fee of up to \$1.50 to the Texas Department of Parks and Wildlife for a numbered identification tag to be attached to each trap. Upon adoption of a crab management plan and a crab advisory committee, the Parks and Wildlife Commission will be authorized to set the fee.

Supporters said the bill would lead to better management of one of the state's most valuable commercial fishing resources and provide useful data about commercial crabbing. After paying a crab trap fee, crabbers would be less likely to leave abandoned traps in state waters, where they interfere with navigation and fishing.

Opponents said the state should encourage the crab industry, not burden it with fees. Fee money should be dedicated for crab management. Once certain crab programs are established, the commission should not be allowed broad discretion to set whatever fee it wants — the crab industry should at least know what to expect.

Legislative History. The *House* amended the bill to set a \$2 maximum fee for each crab trap tag and to exempt those trapping crabs for their personal use from the crab trap tag requirements, then passed it by nonrecord vote, one member recorded voting nay, on April 9. The *Senate* reduced the maximum fee to \$1.50 for each tag until a crab management plan and advisory committee are established and the commission sets the fee, then passed the bill by voice vote, one member recorded voting nay, on May 13. The *House* concurred with the Senate amendment on May 15.

The **HRO analysis** appeared in the April 8 *Daily Floor Report*.

Crimes against animal research and agriculture facilities

SB 114 by Sims
Effective September 1, 1991

SB 114 makes it a crime to interfere, without the owner's consent, with animals used in agriculture, research, testing, education or an exhibition or with vehicles, buildings or premises where animal records or animals are kept or bred. The animals or facilities have to be fenced or have a sign forbidding entry, or the owner or proprietor must issue a warning orally or in writing.

Supporters said the bill would help deter the increasing number of criminal acts inflicted on research and agriculture facilities. Tampering with biomedical research and agriculture facilities threatens further advances in medicine and agricultural production. This bill would not affect legitimate actions by most animal rights groups that do not break the law to express their views.

Opponents said this bill was unnecessary because the offenses covered already are crimes under criminal mischief, trespassing and other sections of the Penal Code. Portions of this bill are overly broad and could infringe on First Amendment rights by inhibiting legal protests outside of facilities and whistleblowing about unethical treatment of animals.

Legislative History. The *Senate* approved the bill by 30-0 on February 25. The *House* amended the bill to designate certain offenses as class B and class A misdemeanors and passed the bill by nonrecord vote, one member recorded voting nay, on April 11. The *Senate* concurred with the House amendments on April 15.

The **HRO analysis** of the bill appeared in the April 10 *Daily Floor Report*.

Allowing licensed fish farmers to sell game fish

SB 726 by Armbrister
Effective September 1, 1991

SB 726 permits the sale by a licensed fish farmer of certain nongame fish, fish legally obtained from out of state, black bass reared in private waters by licensed fish farmers for the purpose of restocking Texas waters and all other fish, except black bass, reared in private waters by a licensed fish farmer.

No game fish may be taken from public fresh waters, except channel or blue catfish more than 14 inches long taken from certain East Texas counties and rivers.

Fish farmers are issued permits and charged fees to take limited quantities of brood stock from public waters and can sell aquatic products (from their farms) to wholesale and retail fish dealers and restaurants without a fish dealer's license.

Supporters said the bill would protect the supply of game fish, discourage the black market, encourage the freshwater fish/aquaculture industry in Texas and provide maximum protection for public resources and fisheries.

Opponents said the state should not give a private industry access to game fish and brood stock taken from public waters. Sport fishers pay to protect brood stock and to maintain game fish — the state should not subsidize fish farmers with game fish that sport fishers pay to protect.

Legislative History. The *Senate* passed the bill by voice vote on April 25. The *House* passed the bill by nonrecord vote, seven members recorded voting nay, on May 15.

The **HRO analysis** appeared in the April 25 *Daily Floor Report*.

PUBLIC EDUCATION

Student grade retention standards

HB 1314 by Rodriguez
Effective August 26, 1991

HB 1314 eliminates the statutory prohibition against promoting a student with a grade average below 70 and permits school districts to adopt multiple-criteria grade level advancement policies. Before retaining a student in the same grade, a district may consider a number of alternatives, including extended school days or years, tutoring or summer programs. The Texas Education Agency must develop a system to collect data on grade-level retention in a cost-effective manner using existing data and as little paperwork as possible.

The bill also requires school districts to determine a dyslexic student's grades on a scale adapted to the student's potential and requires the State Board of Education to adopt rules for dyslexic students who are not exempt from certain skills tests so they can use oral exams or other methods appropriate for them during a test.

Supporters said automatic retention scars students academically and socially, disproportionately impacts minority students and increases the dropout rate. This bill would give teachers the flexibility to judge children individually and would give dyslexic students the opportunity to advance appropriately.

Opponents said the bill would encourage "social promotion" by allowing teachers to let students keep up with their age group, regardless of their academic progress, and burden both districts and teachers with costly paperwork.

Legislative History. The *House* passed the bill by nonrecord vote, three members recorded voting nay, on May 17. The *Senate* amended the bill to require specific rules to be adopted under which dyslexic students would be assessed, then passed the bill by 31-0 on May 25. The *House* refused to concur with the Senate amendments May 26, and a conference committee was appointed. The conference committee retained the Senate's provision for rules regarding the assessment of dyslexic students. On May 27 the *Senate* adopted the conference report by voice vote, and the *House* adopted it by nonrecord vote, one member recorded voting nay.

The **HRO analysis** appeared in the May 9 *Daily Floor Report*.

Establishing a counseling program in elementary schools

HB 1777 by Berlanga, et al.
1991-92 school year

HB 1777 earmarks \$5 million each year from compensatory education funds to finance elementary school counseling programs. Schools are required to apply for the funds, with preference going to districts with the largest number of "at-risk" students. The bill requires that districts receiving funds for a counseling program hire a counselor for each 500 students (one per elementary school of 500 students or more). Districts with fewer than 500 elementary students can employ part-time counselors or share a counselor with another district through a cooperative agreement.

The bill directs the Central Education Agency to develop a job description and evaluation for counselors. It adds the counseling program to the accreditation criteria for campuses in the program. It also directs the State Board of Education to adopt rules encouraging counseling programs for all grades.

Supporters said HB 1777 would help to prevent at-risk students from dropping out of school later in their school careers. In some schools counselors serve as many as 1,800 students and also handle extensive paperwork and testing duties. Studies show that the most effective way of dealing with at-risk students is early intervention. There is a national trend towards developmental counseling, with at least 10 other states mandating such programs. The bill simply redistributes compensatory education funds.

Opponents said implementing a counseling program in the public schools would reduce the effort toward education. The bill is another state mandate with inadequate funding and denies funding to districts not participating in the counseling program. Districts should be allowed to establish their own programs.

Legislative History. The *House* adopted amendments then passed the bill on May 10 by 71-59. The *Senate* passed the bill on May 19 by voice vote, five members recorded voting nay.

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

Public education/ finance revisions

HB 2885 by Luna, Grusendorf
Effective August 26, 1991

HB 2885 makes various changes in SB 351 by Parker, the school-finance bill enacted earlier in the regular session. Effective with the adoption by the voters at a special election on August 10, 1991 of the constitutional amendment proposed in SJR 42, voters of a county education district may adopt a 20 percent property-tax homestead exemption, a \$10,000 exemption for homeowners who are disabled or at least 65 years old or permit taxation of non-income-producing tangible personal property. (The special local elections allowing voters to grant the property-tax exemptions also were held on August 10). The portion of the total tax rate required for debt service for "old debt" (bond debt authorized by April 1, 1991 and issued before September 1, 1992) is not be subject to the tax-rate limit of \$1.50 on total county and local district taxes.

The commissioner of education may appoint a school intervention team ("SWAT team") to assist low-performing campuses. Each school district must implement a plan for site-based decision-making by September 1, 1992. Starting September 1, 1992, school districts are required to make available to their employees group health insurance coverage. Each school district must provide at least 20 hours, rather than 40 hours, of staff development training during regular hours of required teacher service.

Supporters said the bill would allow voters to choose to allow county education district property-tax exemptions. The provisions concerning bond debt would correct a flaw in SB 351 that might prohibit high-debt school districts from issuing any new bonds or enriching current instructional programs, since it counts a district's current debt-service tax rate against its tax-rate limit. HB 2885 also would ameliorate the potential problems of SB 351's requirement of 40 hours of on-the-job "in-service" training for teachers during regular hours of teacher service.

Opponents said the proposed bond-debt provisions would perpetuate the existing advantage in facilities enjoyed by rich districts by exempting their current debt-service tax rates from the tax-rate limit. The site-based school committees would not be granted sufficient authority to break school management out of the stagnation of overcentralized control. These boards should have real power to run their local schools, subject only to audits by the district school board.

Legislative History. The *House* passed HB 2885 on May 20 by 107-23 (two present, not voting). The *Senate* amended the bill to add the provisions concerning the SWAT team, site-based management and health insurance, then passed it on May 26 by 29-2.

On May 27 the *House* initially refused to concur with the Senate amendments and appointed members of a conference committee, then discharged the conferees (a motion to table the motion to discharge failed by 61-85) and concurred with the Senate amendments by 103-45.

The **HRO analysis** appeared in the May 16 *Daily Floor Report*.

School finance revisions

SB 351 by Parker
Effective August 26, 1991

SB 351 revised the public-education finance system, creating a funding system using 188 county and multi-county education districts (CEDs). School districts within a county district share revenue from a minimum tax levied by the county education district.

The bill bases school finance on three local tax-rate segments, or "tiers." Revenue from the first tier is "equalized" by the addition of state funds or the recapture and redistribution of local funds within a county education district. Revenue from the second tier is "guaranteed" by the addition of state funds, and local funds are not subject to recapture and redistribution. Local funds raised by the third tier are totally unequalized, but the amount raised may be limited.

Supporters said SB 351 would create an equitable school-finance system that would not cost the state more than the previous school-finance bill, SB 1, which was held unconstitutional by the Texas Supreme Court. The county education districts would help eliminate some of the disparity in wealth among school districts.

Opponents said that SB 351 would, in effect, impose a unconstitutional statewide property tax. The CED property taxes would be imposed without local voter approval. The bill would "level down" public education by redistributing money from wealthier districts to poor districts. The lack of separate facilities funding would force districts to choose between building necessary facilities and adequately funding educational programs.

Legislative History. The *Senate* passed SB 351 on February 20 by 20-7. The *House* approved a committee substitute on February 28 by 103-36. A conference committee was appointed, and the *Senate* adopted the conference committee report on March 26 by 21-10. On March 27 the *House* refused to adopt the conference report by 63-87, and a new conference committee was appointed. A conference report was read and filed on April 11, but the bill was recommitted to the conference committee the same day, and a new conference committee was appointed. The *House* adopted the final version of the conference committee report on April 11 by 92-58, and the *Senate* adopted it on April 11 by 21-10.

The **HRO analysis** of the House committee substitute for SB 351 appeared in the February 27 *Daily Floor Report*. The analysis of the first conference committee report appeared in the March 27 *Daily Floor Report*. The analysis of the second conference

committee report appeared in the April 11 *Daily Floor Report*. A discussion of school-finance concepts appeared in the February 28 *Daily Floor Report*, and SB 351 is further reviewed in HRO State Finance Report Number 72-2, *Estimate of School Finance Costs*, April 24, 1991.

Note. HB 2885 by Luna and Grusendorf (p. 125-126) made various revisions to SB 351.

Coordinating pre-kindergarten programs with child-care programs

SB 608 by Johnson, et al.
Effective September 1, 1991

SB 608 requires school districts to coordinate use of sites for pre-kindergarten programs with existing licensed child-care and Head Start programs. School-district pre-kindergarten programs will be required to comply with child-care licensing standards adopted by the Department of Human Services.

Supporters said the required coordination between pre-kindergarten programs and existing child-care programs would be a cost-effective approach to providing high-quality continuous care to young children. The state cannot ignore the conditions of the centers where many working Texans send their children.

Opponents said the state should not become further involved in child-care programs. The standards for these facilities should be within the exclusive control of parents and each program.

Legislative History. The *Senate* passed SB 608 on May 14 by 31-0. The *House* amended the bill to exempt school districts from unfunded state mandates and passed the bill on second reading on May 20 by 84-35, then on third reading removed the exemption and passed the bill by 111-28. The *Senate* concurred with House amendments on May 24 by 31-0.

The **HRO analysis** of the companion bill, HB 1088 by Berlanga, Linebarger et al., appeared in the May 17 *Daily Floor Report*.

Limiting liability of public school volunteers

SB 1034 by Bivins
Effective August 26, 1991

SB 1034 exempts public school direct-service volunteers from civil liability to the same extent as school district employees are exempted, except for cases of gross negligence and intentional misconduct. "Volunteer" is defined as a person rendering services on behalf of a public school district without compensation other than reimbursement of expenses. The bill applies only to occurrences after its effective date.

Supporters said the bill would encourage public school volunteerism, a free resource. The threat of liability is a stumbling block in partnership efforts between public schools, the business community and universities. Accidents inevitably occur, and some limit on liability is required for long-term volunteer commitments. PTA volunteers already are given liability immunity under the Charitable Organizations Liability and Immunity Act. Cases involving volunteers operating motor vehicles would be excluded, since such cases are specifically excluded in the parallel section of the code applying to school district employees.

Opponents said shielding various interest groups from the responsibility of negligent conduct would set a bad precedent. The bill fails to establish any alternative paths for injured students to seek remedy and, in effect, levies a tax on injured students and their parents by shifting the costs of injury to them. The Texas Constitution's open courts provision ensures that Texas citizens will not be unreasonably denied the right to redress of injuries. Volunteers lack the professional expertise of school district employees and have no prescribed contractual duties, long-term training, certification requirements or performance evaluation. Other opponents said the bill also should provide limited liability for the donation of goods to schools districts since many businesses and universities wish to donate computers, science and playground equipment but fear possible future liability.

Legislative History. The *House* passed the bill by 142-0 May 23. The *Senate* initially concurred with House amendments by 30-1 on May 25, then on May 27 reconsidered its vote, refused to concur and appointed conferees. The conference committee report made volunteers liable for intentional misconduct and gross negligence and was adopted on May 27 by the Senate by 31-0 and by the House by voice vote.

The **HRO analysis** appeared in Part One of the May 22 *Daily Floor Report*. The HRO analysis of HB 908 by Schechter, a closely related bill, appeared in the Part Three of the May 17 *Daily Floor Report*.

STATE FINANCE/ ECONOMIC DEVELOPMENT

Texas-Mexico Initiative and rural development program

HB 1879 by Von Dohlen, et al.
Effective April 11, 1991

HB 1879 created the Texas-Mexico Initiative, an economic development and educational program to promote business and educational exchanges.

The Department of Commerce is to administer a development fund to award grants to public and private entities for information projects to improve trade between Texas and Mexico. The bill also created an electronic data base for international trade information.

The commerce department is to analyze the availability of federal, state and local government and private sector rural economic development business outreach and data services in Texas by October 1991. The department is authorized to spend up to \$300,000 from the Rural Economic Development Fund to conduct the analysis.

Development programs administered by the Higher Education Coordinating Board will award funds on a competitive basis to eligible public and private institutions of higher education in Texas for programs that promote international awareness. The bill sets up a pilot project that permits Mexican students to pay in-state tuition to attend Texas colleges and also creates a Texas-Mexico student exchange program. (The Legislature appropriated no funding for either of these programs for fiscal 1992-93.)

The commerce department may set up reserve funds in the Texas Export Loan Guarantee Fund to guarantee private-lender export loans.

Supporters said the bill's programs would allow the state to take advantage of new economic opportunities when the United States and Mexico finish negotiations on their free-trade agreement. The agreement will have an enormous economic impact on the Texas economy, as expanded trade relationships with Mexico create new jobs and help Texas compete in the global marketplace. Private funding is available for the programs. The bill expands the capital available to guarantee loans for small rural businesses by allowing the commerce department to set aside reserve funds to support a bond issue worth triple the reserve funds.

Opponents said the Legislature should not set up new programs without the money to fund them. The original bill would have cost \$20 million.

Legislative History. The *House* passed HB 1879 by 133-5 on April 4. The *Senate* passed it without amendments by 31-0 on April 11.

The **HRO analysis** appeared in the April 3 *Daily Floor Report*.

Strategic plans for state agencies/ comptroller review

HB 2009 by Gibson, et al.
Effective August 26, 1991

HB 2009 requires state agencies to develop six-year strategic operating plans. Each agency's plan must include a mission statement of its goals and responsibilities and analyses of its service populations, staffing needs and resources. The strategic plans are to be partly based on a long-term forecast of the state's economy and population supplied by the State Comptroller's Office. The plans must be submitted to the governor, the lieutenant governor, the House speaker, the comptroller, the state auditor, the Legislative Budget Board (LBB), the Sunset Advisory Commission and the Legislative Reference Library by March 1 of even-numbered years. The Office of Budget and Planning and the LBB then are to compile a long-range strategic plan for state government based on the individual agency plans and submit it to the governor, lieutenant governor and members of the Legislature by September 1 of each even-numbered year.

The bill also authorizes the comptroller to review periodically the policies, management, fiscal affairs and operations of state agencies. All future performance audits conducted by the comptroller, the LBB, the Sunset Commission or the state auditor must evaluate the degree to which the agency has conformed to its strategic plan.

Supporters said requiring the development of strategic plans would improve the overall management and efficiency of state agencies and provide state policy-makers with a coordinated and comprehensive set of data with which to plan the long-term direction of state government.

Opponents said that forcing state agencies to divert resources from their immediate tasks to setting six-year planning goals would only add another layer of paperwork and bureaucracy. Authorizing the comptroller to review agency performance would only duplicate unnecessarily the operations of the LBB, the governor's budget office and the state auditor.

Legislative History. The *House* passed the bill on the Consent Calendar by nonrecord vote on May 17. The *Senate* placed an amended version of HB 2009 on the Local and Uncontested Calendar on May 26 and passed it 31-0. The Senate version required state performance auditors to consider agencies' strategic plans when conducting their evaluations and authorized the comptroller to periodically conduct agency reviews. The House concurred with the Senate version on May 26.

Issuing bonds to develop former military bases

HB 2895 by Williamson, et al.
Died in the Senate

HB 2895 would have allowed the General Land Office to issue up to \$250 million in general obligation or revenue bonds for acquiring and developing former federal military bases. The Texas Military Base Development Fund would have been established to acquire and develop former military base sites and to provide loan guarantees to assist businesses in the initial costs of developing former base sites. The fund would consist of money appropriated to the land office and proceeds from bonds as well as federal grant money. The bonds also could have been used to guarantee loans for private economic development on those sites.

Supporters said military base closings could put key areas of Texas at severe economic risk. A number of bases slated for closure are integrally linked with local economies, and the economic dislocation created by their closing is sure to bring recession. By providing businesses with the capital and security to revitalize former base sites, this bill would help fill the gaping economic holes left by base closings. Moreover, closed military bases are valuable state assets, and putting the General Land Office in charge of developing them would ensure that these assets were put to the best public use.

Opponents said the bill would create a developer's welfare fund by getting the state in the banking business. If a development proposal is sound, then it should be able to secure private financing. There are better ways to spur economic growth than throwing state money into potentially risky ventures. Over 40 years the annual debt service on \$250 million in bonds would be in the millions of dollars, creating overall increase in general appropriations in the hundreds of millions of dollars over the life of the bonds.

Legislative History. The *House* passed the bill by nonrecord vote on May 22. The *Senate* Finance Committee reported HB 2895 favorably without amendment on May 24, but the bill was not taken up by the Senate.

The **HRO analysis** appeared in Part Two of the May 21 *Daily Floor Report*.

Note. The House adopted HJR 113, the related constitutional amendment authorizing state general-obligation bond financing to develop abandoned military facilities, by 106-33-2 on May 25. HJR 113 was referred to the *Senate* State Affairs Committee, where no further action was taken.

Texas Performance Review

SB 111 by Montford, et al.
Effective January 31, 1991

SB 111 authorized the Texas Performance Review, an audit of all state agencies and their programs, services and activities. The review was to challenge and question the basic assumptions underlying all agencies and evaluate the efficiency with which they operate their programs. It was to determine methods to maximize federal funds received by the state, identify agencies, programs and services that could be eliminated or transferred to the private sector and make recommendations for programs and services, including reorganization or consolidation of state agencies. Staff was to be provided by the Comptroller's Office, State Auditor's Office, the Sunset Advisory Commission and the Governor's Office of Budget and Planning.

SB 111 also enacted an across-the-board reduction of state spending for fiscal 1991 that, with certain other transfers and appropriation reductions, increased available general revenue by \$139.5 million.

Supporters said the Texas Performance Review would identify ways to improve the efficiency of state government. The public would not accept a tax increase until the Legislature made every effort to eliminate waste in state spending. The budget cuts made by the bill would increase the fiscal 1991 ending balance in the General Revenue Fund, which is carried over as revenue available to be appropriated for fiscal 1992-93.

No apparent opposition

Legislative History. The *Senate* passed the bill January 28 by 29-0. The *House* made technical changes in the bill and passed it by 139-0 on January 31. The *Senate* concurred in the House amendments January 31 by 26-0.

Note. Prior to the first called session Comptroller John Sharp issued the recommendations made by the Texas Performance Review, which formed the basis for cost-saving measures enacted by the Legislature during the first and second called sessions.

Enforcement of cigarette and tobacco tax collection

SB 689 by Bivins
Effective June 7, 1991

SB 689 changed the administration, collection and enforcement of cigarette and tobacco tax laws. Retailers must obtain free permits from the Treasury, while the permit fees for wholesalers and distributors were increased. The penalties for violations for cigarette or tobacco products tax laws are increased.

Supporters said SB 689 would strengthen enforcement against cigarette tax fraud, which costs the state millions of dollars a year in uncollected taxes. The bill would increase cigarette tax collections by about \$43.1 million over the next five years, at a cost of only \$3.5 million. The bill would provide for a more workable audit system by requiring retailers, at no charge, to have permits and increase penalties for violations of tax laws.

No apparent opposition.

Legislative History. The *Senate* passed SB 689 on April 10 by 31-0. The *House* passed the bill on May 9 by 142-0.

The **HRO analysis** appeared in the May 8 *Daily Floor Report*.

STATE GOVERNMENT

State-contract goals for disadvantaged businesses

HB 799 by Dutton
Effective September 1, 1991

HB 799 provides a means by which "disadvantaged business enterprises" (DBEs) may participate in the determination of procurement and public-works contract awards. A DBE is defined as a for-profit corporation or partnership in which 51 percent or more of the stock is owned by persons who are socially disadvantaged because of their identification as members of certain groups.

The state General Services Commission must make a good faith effort to assist DBEs in receiving at least 10 percent of the total value of all purchasing expected to be made each year. State agencies must report each January and July the number and dollar amount of contracts awarded to DBEs and provide assistance and training to DBEs regarding state purchasing procedures.

The Texas Department of Commerce's Office of Small Business Assistance is required to certify qualifying DBEs. Those falsely applying for award of state contracts as a DBE commit a third-degree felony.

Supporters said the bill would help identify disadvantaged businesses and set goals for good-faith efforts to remedy past discrimination in the awarding of state contracts. Significantly less than 10 percent of state contracts now go to DBEs. HB 799 would not establish a system of quotas; 10 percent would be a voluntary goal. To deter those who would take undue advantage of the goals established by HB 799, it would be a third-degree felony to falsify qualification as a DBE.

Opponents said the bill would establish a quota system for awarding state contracts. The 10 percent goal could turn into a ceiling as well as a floor if agencies do no more than meet the minimum. The state would better accomplish the goal of eliminating discrimination by awarding contracts based on ability and cost-efficiency.

Legislative History. The *House* passed HB 799 by nonrecord vote, three members recorded voting nay, on May 17. The *Senate* passed the bill on May 23 by voice vote.

The **HRO analysis** appeared in the May 13 *Daily Floor Report*.

Martin Luther King Jr. state holiday

SB 134 by Tejeda, et al.
Effective August 26, 1991

SB 134 designates the third Monday in January as Martin Luther King Jr. Day and requires that it be observed like a national holiday. The bill removes the second Monday in October (Columbus Day) from the list of state holidays, but specifically designates that day as Columbus Day and requires it be observed by appropriate ceremonies throughout the state, although it is not a paid state holiday.

Supporters said Martin Luther King Jr. was one of the most important Americans of this century, and his life and work should be commemorated with a national holiday. This bill would elevate Martin Luther King Jr. Day in Texas from an optional state holiday for state employees to a nationally observed state holiday. The professional sports industry has indicated that unless Texas upgrades the holiday's status, teams would be reluctant to have playoff games in Texas or to locate new expansion teams here. State employees have not had a paid holiday on Columbus Day for over 10 years, but it still would be observed and recognized.

Opponents said the state already allows employees to observe Martin Luther King Jr. Day as a holiday if they choose; the day should remain an optional holiday, especially in these times of fiscal austerity.

Legislative History. The *Senate* version of the bill, which also would have moved Confederate Heroes Day from January 19 to June 3, passed by 29-2 on April 11. The *House* amended the bill to delete the Confederate Heroes Day provision and to remove Columbus Day as a state holiday and passed it by 115-23-3 on May 22. The *Senate* concurred with the House amendment by 31-0 on May 25.

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

Creating the Texas Department of Housing and Community Affairs

SB 546 by S. Turner
Effective September 1, 1991

SB 546 abolished the Texas Housing Agency (THA) and the Texas Department of Community Affairs (TDCA) and created the Texas Department of Housing and Community Affairs (TDHCA) to carry out their functions. The department is to assist low-income persons obtain housing.

The TDHCA has two divisions: the housing finance division and the community affairs division. The TDHCA's board of directors has nine members, appointed by the governor with the advice and consent of the Senate. Directors serve six-year staggered terms, with the chair appointed by the governor. Both divisions are required to have a goal of applying at least 25 percent of their housing-related funds to provide housing assistance for persons and families of very low income.

The department is authorized to issue bonds under the same programs as the Texas Housing Agency and to acquire and own property on an interim basis. SB 546 sets up the Housing Trust Fund to make loans or grants to persons and families of low and very low income, units of local government, public housing authorities and nonprofit organizations.

Supporters said combining the financial resources of the THA (its bond capacity and tax credits) and the range of programs and experience in TDCA would lead to an effective, coordinated affordable-housing policy. Specifying that specific portions of the housing funds go to persons and families of very low income will help target aid to those who truly need it.

The Housing Trust Fund would help people with low, very low and moderate incomes raise the required down payments to obtain a housing loan and make needed repairs. Increasing the number of public members and broadening representation on the board of directors should result in better decisions and more public accountability.

Opponents said it was premature to combine THA and TDCA. Restrictions on the agency's use of bond money could reduce the market's confidence in the agency's bonds. The housing agency has recently improved its lending patterns and should be allowed to continue its policies free of restrictive statutory program targets. Any surplus funds should be used to support the agency's bonds and not put into the Housing Trust Fund.

Legislative History. The *Senate* passed the bill by voice vote on April 30. The *House* deleted the provision limiting ownership of acquired property and a provision moving the Community Development Block Grant program from the Commerce Department to the TDHCA; set guidelines for the distribution of the Housing Trust Fund; required that some housing finance division funds be deposited with the Texas Treasury Safekeeping Trust Company; and transferred the rental rehabilitation program to the new department, then passed the bill by a nonrecord vote, three members recorded voting nay, on May 25. The *Senate* concurred with the House amendments on May 26.

The **HRO analysis** appeared in the May 24 *Daily Floor Report*.

Establishing the State Office of Administrative Hearings

SB 884 by Montford
Effective September 1, 1991

SB 884 creates the State Office of Administrative Hearings (SOAH) to conduct all administrative hearings before an agency not employing a full-time hearings officer. The office is to be directed by a chief administrative judge appointed by the governor to a two-year term. The SOAH will have an administrative staff as well as a central hearings panel composed of six senior administrative law judges. Agencies may vacate or modify an administrative judge's order or change a judge's finding of fact for policy reasons.

Supporters said the bill establishes the basis for an independent state-agency hearings process. For too long, administrative hearings have been subject to charges of conflicts of interest because hearings examiners are often employed by the agency involved in the case before them. The SOAH would save the state money, because independent judges who contract with smaller agencies are paid more than the salaried judges who would be employed by the office. Moreover, agencies would still retain control over policy decisions, since they would retain the right to overrule a judge's decisions on matters of policy.

Opponents said the chief administrative judge's term of office should be longer than two years. A six-year term (not concurrent with the governor's term of office) would insulate the chief judge from partisan politics and would allow the chief more time to develop on-the-job administrative expertise.

Legislative History. The *Senate* passed the bill by voice vote on April 11. The *House* amended the bill to require the chief administrative judge to be board-certified in administrative law, then passed the bill by nonrecord vote. The Senate concurred with the House amendment on May 27.

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

TRAFFIC/ TRANSPORTATION

Automatic driver's license revocation for DWI arrest

HB 4 by Berlanga, McCollough, et al.
Died in Senate committee

HB 4 would have allowed peace officers to suspend for 90 days to a year the driver's license of those *arrested* for a DWI offense or for involuntary manslaughter caused by intoxication. The suspension would have been for one year if the driver had any prior record of a DWI-related offense. The driver would have been issued a temporary license good for 40 days and would have a right to a hearing before a hearing officer of the Department of Public Safety. A driver could have appealed the department's decision to a county court at law, where no further testimony would have been heard and the court could have reversed DPS's decision. Refusing to give a blood specimen or refusing to take a breath test would have been grounds for a license suspension of 180 days, one year for certain repeat offenders. A \$100 fee would have been required for license reinstatement after a suspension. HB 4 would also have increased jail time for certain DWI offenses, required that at least 48 hours be served consecutively and allowed a judge to order an offender to perform community service.

Supporters said HB 4 would strengthen the state's DWI laws and save thousands of lives every year. Texas cannot afford to ignore the harm DWI does to its citizens: Dallas now leads the nation in motor vehicle fatalities and Houston is third, just behind Los Angeles. Last year, drunk drivers killed 1,402 Texans and injured 35,516 more. HB 4 would bring the state a \$16 million federal incentive grant. Thirty states now have Administrative Driver's License Revocation (ALR), and state courts and the U.S. Supreme Court have ruled that ALR is constitutional.

Opponents said ALR would improperly give judicial powers to an executive branch of government. Revoking a license is an adjudicative power, not a law enforcement power. ALR is usually applied when a driver refuses to take a breath test, which are known to be unreliable.

Legislative History. The *House* adopted amendments that restored the original version of the bill and would have made driving with an open alcoholic beverage container in the vehicle an offense for which the driver's license could be suspended, then passed the bill by 135-8 on May 21. The *Senate* on May 24 referred HB 4 to the State Affairs Committee, where no further action was taken.

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

Note. During the second called session, the Senate by voice vote on August 20 passed SB 6 by Zaffirini, authorizing administrative license revocation (ALR) for DWI violations. The bill was reported favorably, with a substitute, by the House Criminal Jurisprudence Committee, but the committee report was not filed before the session ended.

Annual defensive-driving option for ticket dismissal

HB 70 by Williamson
Effective September 1, 1991

HB 70 changes from two years to one year the limitation on using the ticket-dismissal provision of VACS 6701d, sec. 143a, which allows a judge to dismiss charges of class C traffic misdemeanors if the defendant subsequently completes a driving-safety course.

The bill requires a person convicted of a traffic offense to pay a \$3 court cost to be deposited in the government treasury of the collecting court.

As a provision for allowing a driving-safety course to dismiss a ticket, a judge must see proof of liability insurance.

Supporters said HB 70 would increase traffic safety and help curb automobile insurance rates. It would not reward flagrant traffic violators, since a speeding violation in excess of 24 miles per hour above the limit could not be dismissed. Current law already allows judges complete discretion in whether to offer the driving-safety option.

Requiring a person to show proof of insurance to get a ticket dismissed, as one must do in getting a driver's license and for receiving an inspection sticker, encourages universal compliance with law requiring liability insurance for all drivers. Traffic violators should be expected to cover their court costs.

Opponents said reducing the limitation period on traffic ticket dismissals would encourage drivers to violate the law and enable repeat offenders to keep their bad driving records hidden. Fees for traffic violators are exorbitant and need not be raised, and having to show proof of insurance for ticket dismissal would discriminate against those who cannot afford such insurance.

Legislative History. The *House* amended the bill to add the proof of liability insurance provision and the \$3 court cost fee, then passed it on April 18 by nonrecord vote. The *Senate* passed the bill by voice vote on May 8.

The **HRO analysis** appeared in the April 18 *Daily Floor Report*.

Requiring license plate sticker on front windshield

HB 225 by Willis, et al.
Effective September 1, 1991

HB 225 requires that non-current vehicle license plates be validated by attaching a symbol or tab to the inside of the vehicle's front windshield, directly above the inspection sticker. Operators of vehicles without windshields will be issued a tag that can be attached to the rear license plate. The provision applies to registrations issued for years ending after December 31, 1994.

Supporters said inside tags will protect motorists from the burgeoning problem of license-tag thievery and save the state millions of dollars in lost vehicle registration fees and manufacturing costs, since inside tags are cheaper to make than the stickers used on license plates. Peace officers could check for registration and inspection stickers at the same time.

Opponents said the bill would hinder law enforcement because an officer can spot rear tags on cars going in the same direction as the officer much more easily. Instead of eliminating theft, inside tags would cause thieves to damage the car when stealing a tag.

Legislative History. The *House* passed the bill by nonrecord vote on May 7. The *Senate* passed the bill by voice vote on May 21.

The **HRO analysis** appeared in the May 1 *Daily Floor Report*.

Continuing the Texas Motor Vehicle Commission

HB 524 by Cain
Effective June 13, 1991

HB 524 continues the Texas Motor Vehicle Commission (see Note), strengthens the "lemon law" by allowing recovery if the defect impairs the use *or* the value of the vehicle, allows certain safety hazards to be grounds for recovery, lengthens the period of eligibility for recovery to up to two years or 24,000 miles, requires manufacturers and distributors to reimburse consumers for reasonable incidental expenses, expands the executive director's authority to hear lemon complaints and issue orders, allows judicial review of lemon-law orders, clarifies that some repairs are required even after the warranty expires, requires dealers and manufacturers to issue a disclosure statement (containing a toll-free number where consumers can get information about the repair) the first time they sell a repaired lemon and issue a new 12-month, 12,000-mile warranty for the vehicle.

The bill prohibits the financing entities of motor vehicle manufacturers from conditioning an agreement to finance a vehicle on anything but the creditworthiness of the buyer, prohibits them from requiring any purchase besides the car or requiring insurance from a specific source. When manufacturers or distributors terminate a franchise, they must buy back cars that have traveled less than 6,000 miles, at a cost determined by a formula, and pay storage costs to dealers under certain circumstances. Manufacturers and distributors cannot *unreasonably discriminate* between or among franchisees in vehicle sales or terminate a dealer through the actions of a financing subsidiary. Fees are increased for annual licenses issued by the commission and a new fee is created for amendments to a dealer's license.

Supporters said the bill would protect consumers by strengthening the lemon law, protect dealers from unfair treatment by manufacturers and continue a worthwhile agency that prevents fraud, unfair practices and other abuses by dealers, manufacturers and distributors of motor vehicles.

Opponents said the bill would unfairly discriminate against vehicle manufacturers by forcing them to buy back used cars at high value, make them state, on resale, that a car was a lemon even if it were completely repaired, and impose incidental damage costs that no other manufacturers of high dollar items are required to pay.

Legislative History. The *House* amended the bill to provide that buses or motor homes may not receive a safety-inspection sticker if they have been altered so they are below the manufacturers clearance standards, then passed the bill by nonrecord vote, three

members recorded voting nay, on March 7. The *Senate* amended the bill to strengthen provisions in the lemon law, alter the size of the commission and require the governor to designate one member as chair, clarify what a manufacturer or distributor must pay for and buy back when a franchise is terminated, raise license fees and remove financing entities from the definition of manufacturer or distributor, passed the bill by 31-0 on April 30. The *House* refused to concur in Senate amendments on May 10 and a conference committee was appointed. The *House* adopted the conference report by 132-2 on May 23 and the *Senate* adopted it by 31-0 on May 25.

The **HRO analysis** appeared in the March 6 *Daily Floor Report*.

Note: HB 9 by Cain, first called session, abolishes the Texas Motor Vehicle Commission on September 1, 1992, and creates a motor vehicle division within the newly created Texas Department of Transportation (TxDOT). The executive director of TxDOT will appoint the director of the motor vehicle division, and hiring preference will be given to former motor vehicle commission employees. A six-member board appointed by the governor will advise TxDOT about motor vehicle matters.

Creating auto theft-prevention authority and insurance policy fee

HB 640 by Counts, et al.
Effective June 6, 1991

HB 640 established the Automobile Theft Prevention Authority (ATPA), governed by a seven-member board and funded by a \$1 fee on vehicle insurance policies. The ATPA, within the Governor's Criminal Justice Division, provide financial support to local law enforcement agencies, prosecutors, courts and community and business groups.

Each insurance company is required to pay the ATPA a fee equal to \$1 times the total number of years or portions of years for which vehicles were covered by their policies during the prior year. Failure to pay could result in the revocation of an insurer's certificate of authority by the State Board of Insurance. Proceeds from the fee will be deposited in a new Auto Theft Prevention Fund in the state treasury, and interest on the fund will be credited to the fund.

Peace officers will be authorized to stop registered vehicles operating during a time of day the owner indicates as a non-use period. ATPA will be subject to performance review and Sunset Act review.

Supporters said auto theft in Texas is rising at a rate faster than the national average. Texas ranks third in the nation in the number of auto thefts. Insurers say the incidence of fraudulent claims also has increased. These auto thefts not only hurt the car owners but also result in higher auto-insurance premiums. The new authority would coordinate state efforts to halt auto theft, resulting in savings that would far outweigh its small cost.

Opponents said the bill did not address the particular problems stemming from Texas' location on an international border and the issue of international theft. The U.S. Customs Service should have a role in this program. The \$1 fee charged to insurers would be passed on to consumers.

Legislative History. The *House* passed the bill on March 26 by 106-35-2. The *Senate* amended the bill and passed it on May 1 by voice vote. A conference committee report was adopted on May 25 by the House by 113-19-1 and by the Senate by 31-0.

The **HRO analysis** appeared in the March 25 *Daily Floor Report*.

Establishing a \$5 fuel conservation speeding offense

HB 1820 by Craddick
Died in Senate committee

HB 1820 would have created a new traffic offense — "unnecessary waste of a resource"— for drivers violating federally imposed speed limits established by the State Highway and Transportation Commission in response to federal restrictions. The punishment for this offense would have been limited to a fine of \$5.

A floor amendment would have created \$5 coupons available from the Department of Public Safety in books of five and valid for one year. These coupons could have been given to law enforcement officers whenever a person was stopped for violating the "fuel conservation speed limit," as full payment of the fine and as an exemption from court costs or fees otherwise applicable. Net receipts from coupon sales would have been deposited into the General Revenue Fund.

Supporters said most motorists disregard federal speed limits while maintaining safe speeds below once-legal state limits. The federal speed limit is overly restrictive. Speeds of 70 mph were considered safe before the early 1970s and still are on many open straight roads. It is highly unlikely that the Federal Highway Administration (FHA) or Congress would actually revoke the state's federal highway aid. The new fine would not violate federal law since the federal speed limit statute does not address the level of penalty to assign offenders.

Opponents said the bill would endanger Texas' federal highway dollars by allowing drivers to circumvent the federal speed limit for a nominal fee. Studies show that accidents increase as speed limits are raised. County governments would lose ticket revenue since many current speeding offenders fall into the bill's window of allowable speeding.

Legislative History. The *House* added a floor amendment establishing the coupon method of fine payment, then passed the bill on May 15 by nonrecord vote, 24 members recorded voting nay. The bill was tagged in the *Senate* State Affairs Committee, where no further action was taken.

The **HRO analysis** appeared in Part One of the May 13 *Daily Floor Report*.

Driver's license suspension for drug offenders, juveniles

SB 16 by Bivins/ HB 434 by Rabuck, Rudd, et al.
Effective September 1, 1991

SB 16 requires the six-month suspension of the driver's licenses of drug offenders. It prohibits the Department of Public Safety from reissuing driver's licenses of those who, at the time of their conviction, did not have valid driver's licenses or had driver's licenses in suspension. Effective August 31, 1993, completion of a drug education program, governed by the Texas Commission of Alcohol and Drug Abuse (TCADA), will also be required for license reinstatement. Money from the operator's and chauffeur's license fund will be used to establish the drug education program. The bill appropriates \$600,000 to TCADA for the education program.

HB 434 requires the license suspensions for 90 days to two years of persons under age 21 convicted of certain traffic and drug offenses, regardless of whether the persons are required to attend a driver education program. The bill allows judges to order license suspension or denial for up to six months of licenses of persons under 21 convicted of delinquent conduct or conduct indicating a need for supervision.

Supporters of the bills said federal regulations demand that states pass drug-related driver's license suspension laws or lose 5 percent of their highway funds. The threat of loss of driving privileges should be an effective deterrent for juvenile offenders.

Opponents said the bills went beyond federal requirements. Removing people's driver's licenses would inhibit access to their jobs. No greater penalty or added enforcement was established for driving without a license, so any deterrent effect, especially for juveniles, would be illusory.

Legislative History. The *Senate* passed SB 16 on March 18 by voice vote. The *House* passed the bill on the Consent Calendar by nonrecord vote on May 24.

The *House* passed HB 434 on the Consent Calendar by nonrecord vote on May 2. The *Senate* amended the bill, then passed it by voice vote on May 24. The *House* concurred with Senate amendments on May 25.

Continuing the highway department

SB 352 by Barrientos
Effective September 1, 1991

SB 352 continues the Texas Department of Highways and Public Transportation (see Note). The bill provides that no two commissioners may be from the same geographic area and one commissioner must reside in a rural area. It creates three new advisory committees: for environmental reviews, public transportation and bicycle road use. A permanent, six-member environmental committee, appointed by the governor, lieutenant governor and speaker will advise the commission on department rules.

The bill also includes requires the commission to hold annual hearings on project selection, expands the department's authority to lease property and make payments to owners of condemned property, authorizes certain units of government to finance construction of approved highway projects, requires the department to notify legislators of road projects being completed in their counties, requires the department to review road projects in light of increased traffic from international trade, and raises weight limitations for cement trucks. It adds provisions for equal opportunity programs and minority hiring, establishes a disadvantaged business program and establishes a conditional grant program for minority engineering students.

Supporters said the bill would increase environmental review of highway projects, encourage public input in a variety of areas and result in increased hiring of women and minorities. Keeping a three-member commission would ensure professional decisions about projects rather than politicized squabbles about project location.

Opponents said the number of commission members should be increased to reflect the geographic and ethnic diversity of the state. The environmental protection provisions in the bill are inadequate. The attorney general should be given the power to enforce memoranda of understanding between agencies, and the department should be required to adopt rules regarding project selection.

Legislative History. The *Senate* passed the bill by voice vote on March 20. The *House* adopted several amendments, including requiring the department to review road projects to see if they are adequate to handle increased traffic from international trade and allowing certain local units of government to finance construction of approved state highway projects, then passed the bill by nonrecord vote, one member recorded voting nay, on April 3. The *Senate* refused to concur with the House amendments on May 19, and a conference committee was appointed. On May 27 the *Senate* adopted the

conference report by voice vote, one member recorded voting nay, and the *House* adopted the conference report by nonrecord vote, one member recorded voting nay.

The **HRO analysis** of the companion bill, HB 752 by Cain, appeared in the March 25 *Daily Floor Report*.

Note. During the first called session, the Legislature enacted HB 9 by Cain, creating the Texas Department of Transportation (TxDOT) on September 1, 1991 from the former Texas Department of Highways and Public Transportation and the Texas Department of Aviation.

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