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# HOUSE RESEARCH ORGANIZATION

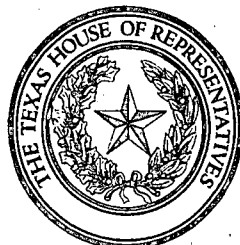
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special legislative report

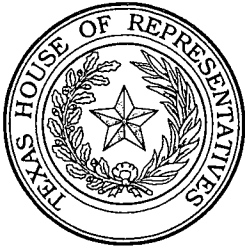
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## SUMMARY OF 1991 SPECIAL SESSION LEGISLATION

October 24, 1991



Number 173



# HOUSE RESEARCH ORGANIZATION

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Tom Whatley, Director

October 24, 1991

Number 173

## SUMMARY OF 1991 SPECIAL SESSION LEGISLATION

During its first and second called sessions, the 72nd Legislature enacted a wide range of significant legislation. It proposed to the voters at the November 5, 1991 election constitutional amendments to allow a state lottery and to authorize a total of \$1.4 billion in new general-obligation bonds for correctional and mental health/mental retardation facilities and student loans. It approved the reorganization and consolidation of environmental protection, health and human services and transportation agencies, adopted fiscal management measures in response to recommendations of the Texas Performance Review and approved a comprehensive criminal justice plan that settled lawsuits by 14 counties seeking reimbursement for holding in their jails state prisoners awaiting transfer to state prison.

This Special Legislative Report summarizes the laws with statewide impact enacted by the Legislature during the summer 1991 special sessions. The appropriations and revenue measures approved during the special sessions are reviewed in House Research Organization 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

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## INTRODUCTION

During two called sessions in the summer of 1991, the 72nd Legislature approved legislation that significantly changed the structure of state government. Based on recommendations made by the Texas Performance Review, an audit of state agencies and programs required by the Legislature during the regular session, and proposals made during the regular session, the Legislature:

- approved reorganization plans that will consolidate agencies dealing with environmental protection, transportation and health and human services, revised the jurisdiction of the Department of Commerce and implemented federal requirements under the Clean Air Act;
- adopted a new fiscal management plan making a variety of changes that will save \$779 million in general revenue in fiscal 1992-93 alone and allow additional savings in later years;
- adopted a state lottery, subject to voter approval in November;
- approved a new criminal justice law that has resulted in the settlement of pending lawsuits filed by 14 counties that sought reimbursement for holding state prisoners awaiting transfer to state prison and will, subject to voter approval, provided for financing of an additional 25,300 prison beds, including 12,000 beds in drug and alcohol treatment facilities, and provides for an overhaul of the state Penal Code and a study of sentencing practices.

This special legislative report summarizes the significant legislation approved by the 72nd Legislature during its first and second called sessions. Other important issues of the special sessions -- the state budget and new revenue for fiscal 1992-93 and congressional and State Board of Education redistricting -- are examined in detail in separate reports.

## STATE FINANCES AND BONDS

During the special sessions the Legislature approved a variety of fiscal management changes based principally on recommendations made by the Texas Performance Review. Two proposed constitutional amendments submitted to the voters on November 5, 1991 would authorize issuance of general-obligation bonds totaling \$1.1 billion for corrections and mental health and mental retardation facilities (SJR 4, first called session; Proposition 4 on the ballot) and \$300 million for student loan bonds (SJR 2, second called session; Proposition 13 on the ballot).

HB 54, first called session, specifies how a state lottery would be operated and is contingent on voter approval on November 5, 1991 of a proposed constitutional amendment, Proposition 11, authorizing a state lottery.

(For additional information on how the fiscal management provisions affected the state budget and revenue situation for fiscal 1992-93, see House Research Organization State Finance Report, Number 72-4, *Fiscal 1992-93 Appropriations and Revenue*, October 18, 1991, and House Research Organization Special Legislative Report, Number 173, *1991 Constitutional Amendments: Part Two*, September 19, 1991.)

### SB 3: Fiscal Management Changes

SB 3 by Montford et al., first called session, implemented certain fiscal-management proposals, many made by the Texas Performance Review. The revised estimate of the fiscal impact of SB 3 projects a net gain to the General Revenue Fund of \$779 billion for fiscal 1992-93, plus a \$228 million loss to the State Highway Fund.

### Consolidation of state funds

The comptroller may, with the treasurer's concurrence, abolish state funds in existence on August 31, 1993 and merge the money into the General Revenue Fund. Funds that cannot be merged because of constitutional, federal or other restrictions will be grouped into separate funds. Funds outside the Treasury, trust funds, funds created by the Constitution and funds for the judicial branch will not be affected.

A Funds Review Advisory Committee — consisting of the governor, comptroller, treasurer, state auditor and director of the Legislative Budget Board — is to recommend biennially the consolidation or elimination of funds.

## **Elimination of dedications**

All statutory dedications of state revenue, other than those enacted to comply with state constitutional or federal requirements, will be nullified on August 31, 1995, with dedicated revenue deposited into a fund or account to be determined by the comptroller, unless the dedication is reenacted by the Legislature after September 1, 1991. Revenue set aside for a particular purpose will be available only if appropriated for that purpose. Dedicated revenue not appropriated by the end of a biennium will be available for general governmental purposes.

## **Constitutional spending limit enforcement**

The Legislative Budget Board may not submit a proposed budget or appropriations bill at the beginning of a regular session until an appropriations growth-rate limit has been adopted, as required by the Art. 8, sec. 22 of the Constitution. (Art. 8, sec. 22 prohibits the Legislature from increasing appropriations by a rate greater than the estimated rate of growth in the state economy. Under current law, the LBB is to determine the rate of state economic growth, but in recent years it has not adopted a growth rate.) If the LBB does not adopt a spending limit, then the Legislature may not appropriate for the *next* budget period more than the amount of state tax revenues (not constitutionally dedicated) that was appropriated for the *current* budget period.

## **Reduction in state contribution to Teacher Retirement System**

The state contribution to the Teacher Retirement System for the last quarter of fiscal 1993 will be delayed until September 1993. (This means that \$234.7 million will not be counted as state general-revenue spending for the fiscal 1992-93 budget period, which ends on August 31, 1993.) The previously authorized delay of the state contribution to the TRS for the last quarter of fiscal 1991 was repealed. (The *amount* of the state contribution to the TRS fund also was reduced; see report on HB 158 on page 13.)

The state auditor is to conduct a financial and program audit of the management, finances and investment practices of the TRS by August 31, 1993.

## **Limit on state debt**

The Legislature may not authorize additional state debt (general-obligation and revenue bonds and large lease-purchase agreements designed to be repaid from general revenue) if the resulting total annual debt service from the General Revenue

Fund would be more than 5 percent of the average of general revenue (except constitutionally dedicated funds) over the preceding three fiscal years. (Currently bond debt service is around 1 percent of the general revenue average.) Bonds backed by the full faith and credit of the state that are reasonably expected to be paid from other revenue sources and not create a general revenue draw will not be considered state debt.

### **Budget execution authority**

Budget execution proposals (shifting appropriations among agencies and programs when the Legislature is not in session) may be initiated by the Legislative Budget Board, as well as by the governor; each must concur with the other's proposal. The prohibition against an order increasing an agency's appropriation by more than 5 percent or decreasing it by more than 10 percent has been repealed.

### **State legal services**

The attorney general is to provide all legal services for agencies in the executive branch of state government, starting September 1, 1992, except for the Governor's Office, institutions of higher education, agencies statutorily authorized to hire counsel, agencies governed by an elected official or with a director appointed by the governor, and 13 specific state agencies. Executive-branch agencies may employ outside counsel only with the approval of the attorney general, except for constitutionally established agencies and for other agencies hiring hearing examiners, administrative law judges or other quasi-judicial officers.

### **Centralized debt collection**

State agencies are to adopt uniform rules for debt-collection by September 1, 1992, following guidelines adopted by the attorney general. If the debt cannot be collected using normal agency procedures, the agency must report the delinquent debt to the attorney general for further collection efforts. The attorney general may charge reasonable fees and costs for collection; fees will be deposited in the General Revenue Fund. An agency may retain a person who is not a full-time employee to collect a debt only with the authorization of the attorney general.

The comptroller may subtract the amount of delinquent state taxes from any amount owed by the state to a delinquent taxpayer, except current wages, and issue a warrant for the difference.

## **County retention of motor-vehicle sales tax**

Counties may no longer retain 5 percent of motor-vehicle sales tax collections but instead will retain motor-vehicle registration fees equal to motor-vehicle sales tax retentions in the prior year. Retained fees, which are constitutionally dedicated to highway use, may be used only for county road and bridge construction, maintenance and rehabilitation, right-of-way purchase or utility relocation. (This change increased anticipated fiscal 1992-93 general revenue from motor-vehicle sales tax collections by \$103.6 million because the portion of sales tax revenue that otherwise would be retained by the counties now will be deposited in the General Revenue Fund. It will decrease anticipated Highway Fund receipts from motor-vehicle registration fees by \$118.1 million because counties now will keep part of vehicle registrations that otherwise would have gone to the fund.)

## **Delay of motor-fuels-tax allocation**

The allocation of August motor-fuels-tax receipts (one-fourth to public education and three-fourths to highway construction and maintenance) will take place on the fifth working day of September, rather than August 31. (This change increased anticipated fiscal 1992-93 general revenue by \$95.8 million by allowing the General Revenue Fund to retain motor-fuels-tax receipts that otherwise would have been transferred on August 31, 1993, the end of the fiscal 1992-93 biennium. Revenue to the Available School Fund and Highway Fund, which receive the motor-fuels-tax receipts, will thus decrease by the same amount in fiscal 1992-93.)

## **Centralized bond issuance**

The Texas Public Finance Authority will have the exclusive authority to issue capital-project revenue bonds for all institutions of higher education (except the University of Texas and Texas A&M University systems and institutions issuing Higher Education Fund bonds), the Parks and Wildlife Department, the Texas National Research Laboratory Commission and the Texas National Guard Armory Board. (Texas Turnpike Authority and the Permanent University Fund bonds are not affected.)

The Texas A&M System was authorized to issue up to \$30 million in revenue bonds for Laredo State University.

The Texas Public Finance Authority board was expanded from three members to six.

## Plans and reports

**Capital improvement plans.** Before each regular legislative session, the governor and Legislative Budget Board are to jointly adopt a six-year strategic capital improvement plan, to be submitted to the Bond Review Board and the Legislature, containing a prioritized description of state agency capital improvement needs, an estimate of how the needs can be financed and a recommended debt limit. Agencies may not use appropriated funds to acquire a capital improvement unless the funds specifically were appropriated for the acquisition and the proposal complies with the debt issuance plan.

The Bond Review Board is to issue a biennial statistical report showing the level of state and local debt.

**Reports on self-supporting bonds.** Agencies issuing self-supporting general-obligation bonds (bonds financing loans that are repaid with interest or that generate other income) are to file reports with the Bond Review Board on the performance of loans supporting the bonds. The affected programs are the Texas Water Development Board political subdivision loan program, the Veterans Land Board land loan program and housing and home improvement program, the Texas Parks and Wildlife Department park development bonds and the Higher Education Coordinating Board's Hinson-Hazlewood college student loan bonds.

**Indirect cost recovery program.** Each executive-branch state agency is to prepare a plan to recover "indirect costs" (the administrative cost of a program), including its portion of statewide support services such as auditing, accounting, budgeting, centralized purchasing and legal services, by applying for federal reimbursement or by setting fees and billing rates. The Governor's Office is to prepare a statewide cost-allocation plan to allocate to each agency its portion of the cost of statewide support services. Federal reimbursement or the amount allocated under the statewide cost-allocation plan, whichever is less, will be deposited in the General Revenue Fund, except for any payment made to another agency for the reimbursed services. The Legislature may appropriate federally reimbursable indirect costs to a state agency.

**Acquisition of federal funds.** The Office of State-Federal Relations (OSFR) is to have primary responsibility for coordinating state efforts to ensure receipt of federal funds. A grant-writing team, primarily located in Austin, is to develop a plan to increase access to federal funds and coordinate with other state agencies a plan for using federal grant funds. An advisory policy board consisting of the governor, lieutenant governor and speaker is to review the priorities and strategies of the OSFR

and suggest modifications. The governor or Legislative Budget Board may reduce the appropriation of any agency making an unsatisfactory effort to acquire federal funds. Other agencies may locate staff in Washington, D.C., to work under the supervision of the OSFR. The Commerce Department's Office of Grant Information was abolished.

**Internal audits.** Internal auditors for state agencies are to conduct economy and efficiency audits and program-results audits. All state agencies and institutions are required to prepare an annual internal audit report describing the most significant finding and recommendations of each audit, management actions taken in response to these findings and the status of recommendations for the previous year's audit. The state auditor is to annually summarize all major internal audit findings, conclusions and recommendations, identifying common themes.

**Oil and gas production reporting plan.** An Interagency Energy Council — composed of the General Land Office, Railroad Commission, University of Texas System and Comptroller's Office — is to review the oil-and-gas-production reporting policies of the agencies and submit a comprehensive reporting plan to the governor and Legislature by January 1, 1992. If the plan is not submitted by then, the comptroller is to assume the duties of the council. The plan is to establish a shared data base of taxable values, royalty payments and production variables, develop a unified audit process and simplify tax reporting and royalty payment collection.

### **Direct deposit payment**

The comptroller is required, rather than permitted, to use an electronic funds transfer system to pay the salaries of all state employees above salary level 8, the annuity payments from the Employees Retirement System and the Teacher Retirement System, recurring payments to governmental entities and payments to designated vendors, starting January 1, 1992. Warrants may be used only if an employee under salary level 8 makes a written request, an employee, annuitant or vendor shows that he or she cannot establish an account qualifying for electronic funds transfer or the use of electronic funds transfer is more costly than a warrant.

### **Payroll deduction for state employee groups**

State employees may authorize the transfer from their salary or wage payment of the membership fee of a state employee organization that had a membership of at least 4,000 state employees on April 1, 1991, or has had a dues structure for state employees in place for at least 18 months that is at least one-half of its national fees. The comptroller is to charge an administrative fee.



### **State-employee premium conversion benefit**

State employees automatically will be enrolled in the premium conversion portion of the cafeteria plan, unless an employee elects not to be enrolled. (The cafeteria plan allows state workers to pay health-insurance premiums, deductibles and co-insurance payments and child-care expenses with pre-tax dollars.)

### **Expansion of rapid deposit program**

The threshold was lowered for required participation in the Treasury's rapid deposit program, which deposits state funds into interest-bearing accounts as quickly as possible to avoid losing interest earnings. For state agencies, the threshold was lowered from \$100 million in collected revenue to \$50 million; for individuals, from \$2 million in total annual payments to \$500,000. An agency may by rule lower the threshold for individuals to \$250,000. The Treasury may require a state agency collecting more than \$50 million or processing more than 100,000 transactions a year to implement a rapid deposit program if it would result in a net savings of state revenue. Payments due on state holidays are payable on that date, rather than the next business day, if the day is not also a banking holiday.

### **Statutory dedication of certificate-of-title fees**

The fee for a motor-vehicle certificate of title is to be increased from \$10 to \$13, and the amount of the fee forwarded to the State Highway Department (Texas Department of Transportation) is to be increased from \$5 to \$8, effective December 1, 1991. Of the amount forwarded to the department, \$5 will be deposited in the General Revenue Fund and \$3 will be deposited in the State Highway Fund.

### **Funding of payday law enforcement**

Interest earned on the Texas Employment Commission Advance Interest Trust Fund (used to pay interest incurred on advances from the federal Unemployment Trust Fund) since September 1, 1988 will be transferred to the fund that supports administration of the payday law (which ensures that private sector employees receive full payment of wages), the minimum wage act and the child labor law.

### **Pecos River Compact account**

The Water Development Board is to transfer one-half of the interest earned on the Pecos River Compact Account (money from the settlement of water rights between Texas and New Mexico) from March 1, 1990 to September 1, 1991 to the

General Revenue Fund, then transfer all funds in the Pecos River Compact account to the Red Bluff Water Power Control District, which may use the remaining funds for agricultural and irrigation projects.

### **Reduction of individual productivity bonus**

The maximum productivity bonus for a state employee was decreased from \$5,000 to \$1,000. (The General Appropriation Act mandates spending reductions or savings of at least \$300 million in fiscal 1992-93 through the Productivity Bonus Program or across-the-board cuts.)

### **Uniform Statewide Accounting Project**

Responsibility for the development and initial testing of the uniform statewide accounting system has been transferred from the comptroller to a new Uniform Statewide Accounting Project, directed by a project director appointed by the comptroller and advised by a 15-project advisory committee chaired by the comptroller and consisting of the governor, lieutenant governor, speaker of the House of Representatives, executive director of the Department of Information Resources, treasurer, state auditor and eight appointees of the governor.

### **Telecommunications planning and policy**

The Department of Information Resources, the comptroller and the General Services Commission are to develop a statewide telecommunications operating plan for all agencies.

### **Municipal grants to charitable organizations**

The minimum population of a city permitted to create programs to grant public money to charitable tax-exempt organizations was decreased from 700,000 to 100,000.

### **Junior-college asbestos-cleanup bonds**

Junior college districts and regional college districts in counties with a population of at least 100,000 may issue long-term notes to pay expenses of asbestos cleanup and removal without an election.

## **SB 9: Abandoned Funeral-Contract Funds for State**

SB 9 by Armbrister, et al., first called session, allows the state treasurer to collect abandoned funds paid by purchasers of prepaid funeral contracts as escheated property — property that has reverted to the state.

Prepaid funeral contracts allow a person to pay for a funeral in advance by installments. The seller places payments in an account, to be withdrawn when the purchaser dies. The state had allowed funeral homes that sell these contracts to keep most of the interest earned by a purchaser's account, as long as the account contained enough funds to pay for the funeral services promised in the contract. If a buyer defaulted on payments or a contract was unclaimed, the account was maintained indefinitely, and the funeral home continued to collect and use the interest.

Under SB 9 funds for an unclaimed, fully paid funeral contract are to be considered abandoned if the contract is at least 60 years old and the person whose funeral was to be financed was born at least 90 years ago. A contract will also be considered abandoned if it is not fully paid, no payment has been made for three years and the contract does not require the seller to refund the amount paid.

A seller of a contract who delivers funds to the treasurer will be relieved of all obligations under the contract. The treasurer will be liable only for funds actually delivered to the state.

## Medicaid Assistance for Disproportionate-Share Hospitals

Since 1981 federal law has required state Medicaid reimbursement systems to "take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs." In these "disproportionate-share" programs, hospitals serving above-average numbers of Medicaid patients are reimbursed with a combination of state and federal funds.

One Texas disproportionate-care program ("Dispro I") provides some 100 hospitals (one-quarter of all Texas hospitals in the Medicaid program) with federal funds raised by matching a special state fee on certain hospital districts. The fee, first imposed in 1989 by HB 123 by Vowell (71st Legislature, first special session) actually is a transfer from the seven largest hospital districts (Bexar, Dallas, El Paso, Harris, Lubbock, Nueces and Tarrant) of 5 percent of their local tax support to a special Disproportionate Share Fund within the Texas Department of Human Services, to be matched with federal funds.

The University of Texas teaching hospitals (M.D. Anderson Cancer Center, UT Medical Branch at Galveston and the UT Health Science Center at Tyler) also transfer certain amounts to the fund.

A second program ("Dispro II") allows the three state-owned teaching hospitals to transfer one-twelfth of their annual charity charges in monthly installments into a state fund, which allows this money to be matched with federal Medicaid funds. Each hospital's share of the fund is based on its proportion of uncompensated charity charges transferred.

(On September 9 the federal government issued new regulations that would eliminate federal Medicaid matches for state spending from special "provider-specific" taxes paid exclusively by hospitals. The regulations would become effective January 1, 1992, if not postponed by Congress or overturned by the courts. The new rules could reduce federal funds received by the state for transfer to the hospitals by \$800 million a year.)

**HB 211.** HB 211 by Vowell, first called session, extended the expiration date of the "Dispro I" program from August 31, 1991 to August 31, 1993.

The UT Medical Branch at Galveston is to transfer \$8,150,000 per year to the Medicaid Disproportionate Share Fund, and the UT Health Science Center at Tyler is to transfer \$550,000 per year. The M.D. Anderson Cancer Center is no longer required to make any transfer.

If the attorney general finds that federal funds are not available to reimburse eligible disproportionate share hospitals under HB 211, the program will not take effect.

**SB 82.** SB 82 by Brooks et al., first called session, created a third Medicaid disproportionate-share program that is to impose a monthly assessment against hospitals and hospital districts providing an unusually large amount of Medicaid care (except state-teaching hospitals). The hospitals and hospital districts are to pay to the state 1.25 percent of their non-Medicaid inpatient revenue, which will then be matched by the federal government. Ninety-five percent of the resulting total will be appropriated to the Department of Human Services (DHS) to support disproportionate-share programs. Five percent will be appropriated to DHS to make payments to rural hospitals that provide a disproportionate amount of uncompensated care to low-income and uninsured patients.

State general revenue funding for the Medicaid program and local revenue for indigent health care may not be reduced as a result of these assessments or money received under this program.

The bill would have no effect if the federal government disapproves of the program or if federal funds are otherwise not available for disproportionate share payments to hospitals.

A disproportionate-share hospital receiving funds is to periodically report to DHS, the governor and the Legislative Budget Board on its use of funds, its policy on service eligibility by patients without health-care coverage, improvements in community services and the impact of the funds on its financial status. DHS is to submit to the 73rd Legislature a report on the status of indigent access to health care, the operation of disproportionate-share programs and local funding of indigent health care services.

## **HB 158: Changes in State Contribution to TRS, Benefit Changes**

HB 158 by Robnett et al., first called session, reduces the state's contribution to the Teacher Retirement System (TRS) from 7.65 percent of payroll to 7.31 percent for the next biennium and grants a one-time cost-of-living increase in benefits to those who retired before May 1, 1989. The bill also brings TRS in compliance with federal laws regarding disability retirement and veteran's reemployment laws and allows the retired teachers health insurance program administered by the TRS to self-insure.

The state contribution rate to TRS was lowered from 7.65 percent to 7.31 percent of payroll for fiscal 1992-93 only, which will save the state an estimated \$84 million. The state contribution rate to TRS will revert to 8 percent on September 1, 1993. The 7.31 percent contribution rate takes precedence over any contribution rate set in other laws, including the General Appropriations Act for fiscal 1992-93.

### **Cost-of-living increases for retirees**

HB 158 increases retiree or survivor death benefits for TRS members who retired or died before May 1, 1989 with at least 10 years of service. The benefits increase by 0.4 percent for every six months between the time the person died or retired and August 1, 1991. The minimum increase is 5 percent. The increase applies to payments due at the end of August 1991. HB 158 also increases the minimum monthly benefit from \$75 to \$150 per month for those retiring on or after September 1, 1991.

(Since HB 158 failed to receive a two-thirds majority in the House when the House voted to concur with Senate amendments, the bill did not take effect immediately but will become effective on November 12, 1991, 90 days after the end of the first called session. The cost-of-living increase, retroactive to August 31, will be paid starting in December.)

### **Disability retirement changes**

HB 158 amends TRS statutes to conform with the federal Older Workers Benefit Protection Act beginning September 1, 1992.

The bill establishes an Optional Disability Retirement Benefits Program in TRS, beginning September 1, 1992. Members of TRS with at least 10 years service who are eligible for disability retirement benefits may choose a new benefits option that would provide survivor benefits. Under the new option, upon a disabled retiree's

death a reduced annuity, or one-half of a reduced annuity, may be paid to a beneficiary until death, or the beneficiary may receive the remainder of the retiree's monthly payments (either 60 or 120 monthly payments). If the retiree's beneficiary died before the retiree, then the optional disability annuity may be raised to the standard disability benefit beginning the first month after the beneficiary's death.

HB 158 allows the beneficiaries of disability retirees to receive in one lump sum the difference between what the retirees paid into TRS and what they received in benefits, if the retiree retired *after* August 31, 1992 or died while receiving optional disability retirement benefits.

HB 158 allows the beneficiary of a disability retiree who retired *before* September 1, 1992 and died while receiving a retirement benefit to receive the same benefits due on the death of an active member, instead of survivor benefits.

HB 158 repeals a provision that allows a disability retiree who retires with 10 years service at age 60, and is entitled to receive a standard annuity based on disability, to receive a standard annuity for life. This provision is only repealed if the attorney general determines by September 1, 1992 that federal law requires it be repealed.

#### **Veteran's reemployment credit in TRS**

HB 158 allows veterans in TRS to purchase military credit for the time they were in the military as a result of voluntary enlistment.

The bill reduces from 10 years to five years the service time a member must have in order to be eligible to purchase military service credit. A member who purchased military service credit must have 10 years of real service to be eligible for post-retirement health insurance.

A veteran who qualified under the federal Veterans's Reemployment Rights Act qualifies to purchase reemployed veteran's credit in TRS. The veteran is required to deposit contributions (based on the salary of the position the veteran had prior to going into the military) for the entire period of active military duty plus 5 percent, compounded annually. The state is required to deposit the state contribution as determined by the retirement system that the veteran would have paid while in the military service, based on the salary of the position the veteran had prior to going into the military. These provisions apply to service credit established after September 1, 1991.

## **Working after retirement**

HB 158 allows retirees to continue receiving retirement benefits if they resume full-time work for no more than six months of a school year, instead of the current limit of five months. Working any part of a month is considered working a full month. The TRS is required to calculate any time the retiree worked as a substitute or worked part-time during the same school year when determining the six-month period. The school no longer has to claim that employment of the retiree was in the best interest of the school.

HB 158 allows a disability retiree to be employed by a school in a position other than substitute teacher for three consecutive months on a one-time trial basis without losing disability benefits or being disqualified from future disability benefits.

These provisions apply to employment on or after August 31, 1991.

## **Other provisions**

HB 158 allows the TRS board of trustees to purchase liability insurance for themselves, their agents and TRS employees. The insurance cannot cover fraud or intentional failure to act prudently. This provision takes effect November 12, 1991.

As of November 12, 1991, TRS trustees are entitled to receive paid leave to attend to official TRS business. The retirement system is allowed to reimburse the trustee's employer for services lost as a result of official trustee business.

Beginning November 12, 1991, the Texas Public School Retired Employees Group Insurance Program (TRS-Care) is allowed to be self-insured, rather than requiring that it purchase insurance from an outside firm.

HB 158 permits those who receive benefits from TRS to give an attorney power to represent them and requires the TRS to honor the power-of-attorney.



## **SJR 2: Bond Issue to Fund Student Loans**

SJR 2 by Barrientos (second called session), on the November 5, 1991 ballot as Proposition 13, would add sec. 50b-3 to the Constitution, authorizing the Legislature to allow the Texas Higher Education Coordinating Board to issue up to \$300 million in general-obligation bonds to finance educational loans to college and university students.

Several student loan programs are administered through the Texas Opportunity Plan Fund by the coordinating board under the umbrella of the Hinson-Hazlewood College Student Loan Program. The Hinson-Hazlewood program offers federally guaranteed student loans backed by the U.S. Department of Education, supplemental loans made primarily to students without family financial support whose need exceeds what they can borrow under the guaranteed loan programs, health education assistance loans (some backed by the U.S. Department of Health and Human Services) and College Access Loans, which are made primarily to middle-income students. About 26,000 students a year receive loans under the Hinson-Hazlewood program. Student loan bonds are considered "self-supporting" by the Bond Review Board, since they are paid back, with interest, by borrowers, not by state taxpayers.

To qualify for the loan programs, students must be Texas residents or eligible to pay in-state tuition and, except for the College Access Loans, must be financially needy. In fiscal 1990 about 26,000 students received about \$81 million in loans. All loans are guaranteed by the federal government, the state or a co-signer.

During its 1991 regular session the Legislature approved SJR 5 by Barrientos, Proposition 2 on the August 10, 1991 ballot, proposing to voters a constitutional amendment authorizing the Legislature to allow the coordinating board to issue up to \$300 million in general-obligation bonds to finance educational loans to college and university students. The proposition was rejected by the voters by 433,116 in favor (49.6 percent), 440,763 against (50.4 percent).

Under SJR 2 the maximum interest rate on the \$300 million in bonds would be set by law. An interest and sinking fund would be established to pay the principal and interest due on the bonds. The Legislature could provide for the investment of bond proceeds and the interest and sinking fund.

Current law (SB 20 by Barrientos, second called session) will limit bond sales to \$100 million a year, enough to cover current annual demand of \$80 million, plus an anticipated \$20-million increase in loan requests.

The Legislature authorized the coordinating board (in HB 686 by Cavazos, regular session) to issue up to \$75 million a year in revenue bonds for student loans. In July 1991 the board sold its first \$75 million in revenue bonds for loans. If the general-obligation bonds provided for in SJR 2 are approved, the board's authority to issue revenue bonds will expire.

(For additional information on SJR 2, see House Research Organization Special Legislative Report No. 172, *1991 Constitutional Amendments: Part Two*, September 19, 1991, pp. 74-78.)

## **SB 4: Bond Issue to Aid McDonnell Douglas Corporation**

### **Background**

McDonnell Douglas Corporation is considering sites in seven states, including a site at Alliance Airport in northern Tarrant County and one at Ellington Field in Houston, for its proposed MD-12 civilian aircraft manufacturing plant. In August 1991 the company requested formal proposals from the proposed sites, including state economic incentive packages. McDonnell Douglas is seeking such features as utility and transportation services, a 600-acre site, fire protection, recruitment and training for workers and a method of financing facilities and equipment without adding to the corporation's indebtedness.

Proposals for financing the plant centered on the state or a state subsidiary issuing general-obligation bonds (backed by the full faith and credit of the state) or revenue bonds. Bond proceeds could be used to purchase land, equipment and buildings that would be leased to McDonnell Douglas. Revenue from the lease would be used to repay the bonds. Leasing a plant rather than borrowing money to build one would give the company federal income tax advantages and would allow it to avoid carrying a large construction debt on its balance sheet. In addition, bonds issued by a state generally have a longer maturity than private-sector bonds.

Supporters of state aid to the plant estimated that the \$1.4 billion MD-12 plant would employ 5,000 to 8,000 workers, create 14,000 indirect jobs and 12,000 construction jobs, increase total personal income in the state by \$718 million annually and generate \$20 to \$25 million per year in additional state tax revenue.

Various state laws permit the state and its subdivisions to issue bonds to assist private industry. These include the Development Corporation Act of 1979 (VACS 5190.6), which authorizes cities, counties and conservation and reclamation districts to create industrial development corporations to issue bonds to finance land, buildings, equipment and improvements for the promotion and development of facilities for manufacturing, industry, transportation and other uses.

Government Code sec. 481.073 authorizes the Department of Commerce to issue bonds to finance projects for the development and expansion of business, commerce and industry and for the purposes described in the Development Corporation Act. Government Code sec. 481.024 creates the Texas Economic Development Corporation, which has authority to issue bonds for economic development projects. SB 1070 by Dickson, regular session, amended Government

Code Chapter 481 to give the Texas Economic Development Corporation authority to issue bonds to assist commercial enterprises.

#### **SB 4**

SB 4 by Glasgow, second called session, created the Texas Major Employer Development Corporation with the authority to issue bonds to finance land, buildings, equipment and other facilities to promote and encourage the location and expansion of major industrial and manufacturing enterprises. (The bond authorization may be used for the McDonnell Douglas project and other economic development projects as well.)

The corporation has the powers granted to the Department of Commerce under Chapter 481 of the Government Code, non-profit corporations under the Texas Non-Profit Corporation Act and development corporations under the Development Corporation Act. The corporation is to be governed by a board appointed by the commerce department board.

SB 4 authorizes the commerce department to develop, plan and coordinate programs, including financing options, to promote and encourage the location and expansion of major industrial and manufacturing enterprises in Texas.

All revenue bonds issued by the corporation must state on their face that they are payable solely from the revenues pledged for that purpose and that they do not and shall not constitute a legal or moral obligation of the state, the department or any other state agency.

Bonds must be approved by the commerce department, the Bond Review Board and, for legality, the attorney general.

## **HB 54: Establishing a State Lottery**

HB 54 establishes a state lottery, if HJR 8 (Proposition 11 on the ballot), a proposed constitutional amendment permitting the Legislature to authorize a lottery, is approved by the voters at the November 5, 1991 election.

A division of the Comptroller's Office is to be established to operate the lottery. The comptroller is to appoint a director of lottery operations and adopt rules concerning lottery operations, including rules about the type of games, the division of ticket-sales revenue into prizes and state revenue, the price of tickets, the amount of prizes, the frequency of drawings, security for a lottery and the means of advertising. Video lottery machines and games in which the winners are chosen on the basis of the outcome of a sports event are prohibited.

Lottery ticket sales must begin within 240 days (about eight months, around late July of 1992) after HB 54 takes effect, which would be upon the official canvass of the vote approving HJR 8, taken 15 to 30 days following the November 5 election.

### **Administration**

The director of the lottery division may appoint deputies and other assistants. Lottery division employees are exempt from the Position Classification Act, which determines salary groups for each job category in state employment.

The director may contract with or employ persons for any lottery function. The director is permitted to establish procedures for purchase or lease of necessary goods and services. Through September 1, 1993, contracts dealing with the establishment of the lottery are exempt from the State Purchasing and General Services Act, the Professional Services Procurement Act, the Information Resources Management Act and the statutes dealing with the use of private consultants by state agencies. In awarding lottery contracts, Texas businesses must be given preference over out-of-state businesses, if cost and quality are equal; U.S. businesses must be given preference over foreign firms. HB 54 includes provisions to encourage the participation of minority businesses in the operation of the lottery.

The director is authorized to obtain criminal history and certain Internal Revenue Service information on ticket sales-agent applicants, employees of sales-agent applicants, division employees or prospective employees, manufacturers or distributors of lottery equipment or supplies and contractors. The director is authorized to commission security officers and investigators as peace officers. The

comptroller is required to give the Legislature and the governor an independent report on lottery security at least every two years.

An independent audit of all lottery accounts and transactions must be provided annually to the director, comptroller, the governor and the Legislature. Lottery operators and sales-agents records are subject to audit by the lottery division, the comptroller and the state auditor.

For fiscal 1992-93, \$12 million from the General Revenue Fund is appropriated to establish the lottery. The comptroller must repay any general revenue funds, plus 10 percent interest, within one year of the first expenditure. Until September 1, 1993, the comptroller is authorized to transfer to the lottery division other funds appropriated to the comptroller; the funds must be paid back within a year, from licensee fee and ticket sales revenue.

The director is required to submit an independent, biennial demographic study of lottery players including income, age, sex, education and frequency of player participation. The first demographic study must be done not later than six months after ticket sales begin.

The lottery division of the comptroller's office is subject to Sunset Act review by September 1, 2003.

### **Lottery revenue and prizes**

The amount of prizes will be determined by the comptroller.

Lottery ticket-sale revenue and license and application fees initially are to be deposited in the state lottery account in the General Revenue Fund. This money can be used for administrative costs of the lottery and prizes, with the remaining portion going either to the newly created Lottery Stabilization Fund or the General Revenue Fund.

In fiscal 1992-93 up to 20 percent of the gross ticket-sale revenue may be used for lottery administration; after that, administrative costs are capped at 15 percent.

To help insulate the General Revenue Fund from possible fluctuations in the flow of lottery revenue, HB 54 establishes the Lottery Stabilization Fund. Each month that the comptroller's estimate of net lottery revenue exceeds \$10 million and net lottery revenue exceeds the monthly estimate, the comptroller is required to transfer \$10 million, plus the difference between the revenue estimate and actual

revenue, to the Lottery Stabilization Fund. If monthly net lottery revenue is less than 90 percent of the monthly estimate of the revenue, the difference between the estimate and actual revenue must be transferred from the Lottery Stabilization Fund to the General Revenue Fund. On the first day of each fiscal biennium, one-half of the balance in the Lottery Stabilization Fund must be transferred to the General Revenue Fund.

Ticket-sales agents may be authorized to pay prizes of less than \$600. All other prizes are to be paid by the lottery director. Prizes not claimed within 180 days will be used for additional prize money in other games and for lottery promotion.

Delinquent taxes or child support payments or defaulted guaranteed student loans will be deducted from any lottery prizes.

### **Ticket-sales agents**

Lottery ticket-sales agents must be licensed by the division and post a bond determined by the director. Licenses may be good for up to two years. The director is required to set license application fees and renewal fees high enough to cover the cost of processing and renewing ticket-sales license applications. The director must attempt to issue at least 20 percent of the licenses to minority businesses.

When issuing a license, the director is required to consider factors such as the applicant's financial responsibility, public accessibility, existing sales agents and whether licensing the applicant would be consistent with the public interest and convenience. A person may not do business exclusively as a lottery sales agent.

The commission for sales agents is to be determined by the director and may not be less than 5 percent of the price of tickets but may include incentive bonuses based on sales volume or other criteria specified by the director.

Tickets may not be sold by a person, or the relative of a person, who has been convicted of a felony, criminal fraud, gambling or a gambling-related offense or a misdemeanor involving moral turpitude in the previous 10 years, is a professional gambler or is delinquent in the payment of any state tax.

A corporation is ineligible to sell lottery tickets if any of the following have been convicted in the previous 10 years of a felony, criminal fraud, gambling or gambling-related offense or a misdemeanor involving moral turpitude, is a professional gambler or is delinquent in any state tax: corporate officers, directors, managers, and shareholders of 10 percent or more of the corporation; holders of more

than a 10 percent equity interest in the applicant or a creditor with more than 10 percent of the applicant's debt; employees who sell tickets or handle ticket-sales money; owners or lessees of a business through which the corporation sells lottery tickets; and persons who share in the corporation's profits. Corporations delinquent in paying any state taxes may not be licensed.

Licenses to sell lottery tickets are prohibited at locations that have an on-premises wine and beer retailer's permit, mixed beverage permit, mixed beverage late-hours permit, private club registration permit, or private club late-hours permit; pari-mutuel racetracks; bingo parlors and land owned by the state or a political subdivision of the state.

The director is authorized to employ or contract with marketing representatives to promote lottery ticket sales, to encourage persons to become lottery sales agents and to investigate the qualifications of lottery sales-agent applicants.

The bill makes it a third-degree felony (maximum penalty of 10 years in prison and a \$10,000 fine) to sell a lottery ticket without a license and a Class A misdemeanor (maximum penalty of one year in jail and a \$3,000 fine) to sell a lottery ticket for more than the value set by the division. The bill prohibits sale of a ticket to someone younger than 18 years old, but does not set a penalty. It would be legal to give lottery tickets as gifts, including to persons under 18 years old.

Tickets may not be purchased with food stamp coupons, proceeds from Aid to Families with Dependent Children checks, credit or debit cards, over the telephone or through the mail. It is a Class C misdemeanor (maximum penalty a \$500 fine) for ticket-sales agents to sell tickets by extending credit or lending money.

Agents are prohibited from selling tickets to officers or employees of the comptroller; members, officers or employees of a lottery operator; employees of companies with contracts to sell or lease goods or services for the operation of a lottery and the immediate families of these persons.

## **Tickets**

The overall estimated odds of winning a prize must be printed on each lottery ticket and prominently displayed where tickets are sold. A toll-free Texas Commission on Alcohol and Drug Abuse telephone number to provide counseling and referral to families experiencing difficulties as a result of compulsive gambling must be printed on each ticket.



## **Advertising**

Lottery advertising may not "be of a nature that unduly influences any person to purchase a lottery ticket or number."

The comptroller, the lottery director or other state officers or employees (except for security officers) may not appear in lottery advertisements, promotions or televised drawings. Advertisements and promotions may not contain the likeness or name of a state officer or employee. Lottery division employees are allowed to participate in a promotional events to award prizes.

## **Improper influence, lobbying and contributions**

The comptroller, the state treasurer, the director of the lottery division and employees of the lottery division are prohibited from accepting a gift or political contribution from: persons with significant financial interest in the lottery; persons related to those with significant financial interest in the lottery; persons who own more than 10 percent interest in an entity with a significant financial interest in the lottery; political action committees involved with persons with significant financial interest in the lottery; and persons who won a lottery prize of over \$600 in the two preceding years.

For two years after leaving office, former comptrollers, state treasurers or lottery directors may not represent for compensation a bidder to operate the lottery, communicate directly with legislators to influence legislation on behalf of a person with a significant financial interest in the lottery, or knowingly accept a gift or political contribution from persons or political action committees with a significant financial interest in the lottery or lottery winners of over \$600. Former comptrollers, treasurers or directors may not represent or receive compensation regarding matters in which they participated while in office.

Persons or political action committees with significant financial interest in the lottery and lottery winners of over \$600 in the preceding two years may not provide a gift or political contribution to the comptroller, treasurer, lottery division director or division employee or, within two years of leaving office, to former comptrollers, state treasurers, directors or division employees.

Improper influence, lobbying and political contributions offenses are Class A misdemeanors.

## **Compulsive gambling program**

The Texas Commission on Alcohol and Drug Abuse must establish a program for public education and research concerning problem or compulsive gambling, including its treatment and prevention. The program must include a toll-free telephone number to provide counseling and referral services to families experiencing difficulty as a result of problem gambling. For fiscal 1992-93, \$4 million is appropriated to the commission for compulsive gambling programs.

## **Offenses**

Altering or forging lottery tickets, claiming a prize by fraud or deceit or conspiring with someone to claim a prize by fraud is a Class A misdemeanor, third-degree felony or second-degree felony (maximum penalty of 20 years in prison and a \$10,000 fine), depending on the amount of the prize. It is a Class A misdemeanor to intentionally make a false statement or entry in a license application or required record or to omit a required record. Conspiracy to commit an offense under HB 54 is a violation one category lower than the underlying offense.

HB 54 amends Chapter 47 of the Penal Code to make participation in the state lottery a defense to prosecution for gambling offenses.

## **CHANGES IN THE CRIMINAL JUSTICE SYSTEM**

HB 93 by Hightower and Stiles, second called session, authorizes the Texas Public Finance Authority to issue up to \$1.055 billion in bonds for prison, mental health and youth corrections facilities, if the constitutional amendment proposed in SJR 4 is approved by voters at the November 5, 1991 election. The bill would appropriate \$672 million of the bond revenue for construction of space for 13,300 new prison beds and 12,000 substance abuse treatment facility beds.

The bill also acknowledges that as of September 1, 1995, the state prison system has a duty to accept from county jails all state inmates, authorizes payments to counties for housing state inmates and creates a new substance-abuse felony punishment.

The bill allows "performance rewards" to counties for diverting offenders from prison, exempts tax increases required to satisfy criminal justice mandates from tax rollbacks, repeals the Penal Code as of September 1, 1994, creates a data-reporting system to track sentencing patterns across the state, creates a special-needs parole classification and makes numerous other changes in the criminal justice system.

### **Bonds for Prison Construction**

#### **Proposed constitutional amendment for \$1.1 billion in bonds**

SJR 4 by Lyon, first called session, proposes a constitutional amendment to allow the Legislature to authorize the sale of up to \$1.055 billion in general obligation bonds to acquire, construct and equip new corrections, mental health and mental retardation and youth corrections facilities and to repair or renovate existing facilities. The proposed amendment (Proposition 4) will be submitted to voters at the November 5, 1991 election.

(The state now has about 52,268 beds in prisons, boot camps, private prisons and psychiatric facilities. Facilities with another 15,569 beds now are under construction and are scheduled to be completed by mid-1993.)

#### **Bond authorization and appropriation**

HB 93 authorizes the Texas Public Finance Authority to issue up to \$1.055 billion in general obligation bonds to acquire, construct, equip, repair or renovate corrections facilities, substance abuse felony punishment facilities or youth corrections

facilities or make major repairs or renovations to convert existing state or federal facilities into corrections institutions or substance abuse felony punishment facilities. (HB 7 by Vowell, first called session, authorizes issuance of the remaining \$45 million of the \$1.1 billion in SJR 4, for mental health and mental retardation facilities.)

HB 93 appropriates \$672.1 million from bonds that would be authorized by SJR 4 to the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID) for fiscal 1992-93 to build maximum-security prison facilities with at least 6,750 beds, six 1,000-bed regional centers, one 550-bed psychiatric center, 12,000 beds for substance-abuse felony punishment centers (a total of 25,300 beds), and to make other improvements and repairs to department facilities.

The Public Finance Authority is prohibited from issuing bonds authorized by HB 93 before September 1, 1993, if the comptroller determines that the state's debt service on the bonds during fiscal 1992-93 will exceed \$46 million.

These provisions will take effect only upon voter approval of SJR 4 (Proposition 4).

## **County Jail Overcrowding**

### **Background**

Limits on Texas prison capacity have caused a backlog of state inmates in county jails awaiting transfer to state facilities. Jails in 54 counties now house around 9,000 state inmates. Fourteen counties filed lawsuits against the state seeking to force the state to take its prisoners or reimburse the counties for housing them. In June 1990 state District Judge Joe Hart of Austin ruled that the state must pay 12 of the counties \$40 per prisoner per day for housing state prisoners awaiting transfer during the period September 1987 to February 1990. Harris and Montgomery counties won a similar state-court lawsuit in June, requiring the state to reimburse Harris County \$21 per inmate per day and Montgomery County \$17 per inmate per day.

In February 1991 U.S. District Judge James DeAnda ruled in the *Alberti v. the Sheriff of Harris County* lawsuit that the state must remove state inmates from the overcrowded Harris County jail or else pay the county \$40 per inmate per day to transfer inmates to other counties and rent jail space to house approximately 1,200 of the state prisoners being held in the Harris County jail. The state has made two payments, \$750,000 and \$1 million, to comply with Judge DeAnda's orders.

## **Compensation payments to counties**

The Legislature in HB 93 designated that \$113.4 million be used in fiscal 1992-93 for payments to the counties for housing state prisoners.

**Qualified counties.** HB 93 provides that those counties that do not have lawsuits pending against the state as of September 29, 1991 may receive compensation from the state for convicted felons being held in their jails awaiting transfer to prison. To qualify for emergency overcrowding or compensation payments under HB 93, counties had to dismiss, abate or settle by September 29, 1991 (the 31st day after the effective date of the bill) any lawsuits concerning these issues filed against the state and could not initiate a new suit for reimbursement for holding state inmates.

By the September 29 deadline, all 14 counties agreed to settle their lawsuits against the state, based on the offer of compensation provided for in HB 93. The lawsuits may be reactivated only if the state does not meet the provisions in HB 93 and only before September 1, 1997. If a lawsuit is not reactivated before September 1, 1997, the court is required to dismiss the suit.

**Basis for compensation.** The Commission on Jail Standards was to determine by September 30, 1991 the number of inmates in jails who, on April 1, 1991, were awaiting transfer to TDCJ-ID (state prison) for a felony conviction, revocation of probation, parole, or release on mandatory supervision and whose transfer paperwork was completed ("state inmates") from counties that qualify for compensation. (The commission's preliminary count of state inmates in county jails as of April 1, 1991 was 7,479.)

By January 15, 1992, counties are to receive an amount per inmate calculated by dividing \$11.5 million by the total number of state inmates in county jails on April 1, 1991. By January 15, 1994, counties are to receive a second payment, calculated by dividing \$11.5 million by the number of state inmates in county jails on September 1, 1993.

**Emergency overcrowding relief.** From August 29, 1991 until August 31, 1993, counties will receive monthly overcrowding payments of \$20 per inmate per day for each state inmate in excess of 50 percent but less than 210 percent of the number of state inmates held in the jail on April 1, 1991. For each inmate in excess of 210 percent of the April 1 number, counties will receive \$30.

From September 1, 1993 until September 1, 1995, counties will receive monthly emergency overcrowding payments of \$20 per inmate per day for each state inmate in excess of 25 percent of the number of state inmates held in the jail on April 1, 1991. For each state inmate in excess of 210 percent of the April 1, 1991, number, counties will receive \$30.

**Inmate transfers from Harris County jail.** If a state or federal court declares that conditions in a county jail are unconstitutional and if, after September 30, 1991, the percentage of inmates in the jail awaiting transfer to state prison is 20 percent or more of the jail population, the Commission on Jail Standards is required to transfer state inmates from the jail to another jail, detention center, work camp or correctional facility, but only to the extent necessary to comply with court orders or to reduce the percentage of state inmates to below 20 percent of the total. (This provision applies only to Harris County.)

The commission is responsible for the actual costs of transporting and maintaining transferred inmates. If the Harris County case had not been settled by September 30, 1991, the state would have been obligated to pay only the first \$20 of the actual daily cost of maintaining the prisoners and one-half of costs in excess of \$20. The transferring county will be liable for all costs not paid by the state.

### **Performance rewards**

The criminal justice board will implement a program to financially reward counties that successfully divert offenders from TDCJ-ID (state prison) into county correctional facilities and programs. In adopting the program, the board has to include such factors as the personal-bond utilization rate, the pretrial diversion rate, the deferred adjudication rate, the probation rate, the probation revocation rate, the use of residential and nonresidential diversion programs, the TDCJ-ID commitment rate, the rate of admissions per index crime and the extent to which the county does not use all the prison admissions to which it is entitled. The minimum award is \$50,000 per fiscal year.

Counties will receive quarterly payments based on their performance in diverting offenders from confinement, which can be spent according to a plan approved by the division. At least 25 percent of the payment must be used for substance abuse prevention and treatment programs, while the rest can be used for pretrial and presentencing services, electronic monitoring, surveillance probation, controlled substances testing, research projects to evaluate the effectiveness of community corrections programs, contract services for felony probationers, residential services for misdemeanor probationers, operation of county correctional centers or

community corrections facilities, the county's community justice plan or any program serving the county's criminal justice needs.

A county that fails to fully cooperate with employees of the institutional division who evaluate inmates for release on parole from the county jail will not receive its performance-reward payments and could be prohibited from confining prisoners.

The Legislature in HB 93 designated that \$40 million be used for performance rewards to the counties during fiscal 1992-93.

### **Diversion training and reporting**

All state attorneys prosecuting felonies and all district court judges are required to annually complete a course on the diversion of offenders from prison.

As of December 1, 1991, the community justice assistance (probation) division of TDCJ is to report annually to the Governor's Office and the Legislature on each county's rate of using pretrial release methods such as bail bonds.

### **Tax increase rollback exemption**

HB 93 provides relief from tax rollback provisions for counties paying for a "state criminal justice mandate" — the amount spent by the county in the prior 12 months for the cost of keeping inmates in county facilities after they have been sentenced to state prison, minus any reimbursement received from the state.

## **Prison Inmate Allocation and Classification**

### **Allocation formula change**

The 71st Legislature, as part of the criminal justice reform bill (HB 2335 by Hightower), required the criminal justice board to develop a formula allocating to the counties space in the prison system when prison capacity is limited.

The formula used to allocate the number of state prison admissions from each county — which currently is based on the county's prior prison admissions, violent crime, total crime, total arrests, population and unemployment — will also include the percentage of all defendants serving sentences for felonies who were paroled to reside in that county.

A county transferring a prisoner to the state has to deliver, among other documents, a copy of the Criminal Justice Data Report and a presentence investigation report.

### **Duty to accept**

HB 93 declares that, until September 1, 1995, the state has no duty to accept inmates except as provided by the allocation formula, and counties are required to bear the expense of housing inmates eligible for transfer to state prison. After that date, the state will accept felony inmates from county jails within 45 days of the completion of processing paperwork. The state's and counties' duties may be enforced by a writ of mandamus.

The duty to accept inmates was contingent on the 14 counties settling their lawsuits against the state by September 29, 1991; the provision took effect when the counties and the state signed a settlement agreement by the deadline. The settlement agreement between the counties and the state provides that the state will have a duty to accept state prisoners regardless of whether the voters approve SJR 4, the proposed constitutional amendment allowing \$1.1 billion in general obligation bonds to finance expanded capacity for correctional facilities. (The settlement agreement states that *none* of its provisions are contingent on voter approval of SJR 4.)

### **Classification**

The institutional (prison) division may classify each inmate upon arrival in a category that allows accrual of good-conduct time at a ratio of one day earned for each calendar day served. HB 93 repealed a requirement that inmates be classified on arrival in a category in which less than one day of good conduct time was earned for each calendar day served. Also repealed was a requirement that an inmate serve at least 90 days in a time-earning category before being reclassified.

## **Revision of Penal Code and Sentencing Statutes**

### **Penal Code repeal**

The Penal Code is repealed, effective September 1, 1994, except for the sections involving murder, capital murder and capital felonies.



## **Texas Punishment Standards Commission**

HB 93 creates a Texas Punishment Standards Commission to study the punishments for criminal offenses, sentencing practices, costs of prison construction and the effect of jail and prison overcrowding and parole laws.

The commission is required to propose legislation to revise punishments, probation and parole laws to ensure that defendants convicted of causing the greatest harm or posing the greatest threat of future harm are confined for a significant portion of their sentences. The commission is also required to propose legislation to expand prisons, jails and community correction facilities to confine convicts who pose the greatest threat, including the use of military facilities abandoned by the federal government; and to expand the probation and parole system to allow each probationer or parolee to receive supervision based on correctional needs rather than capacity limitations and to have good time credited toward parole or early release earned through participation in education, job training and substance abuse treatment programs.

The commission consists of 25 members: 15 appointed by the governor, five senators appointed by the lieutenant governor and five representatives appointed by the speaker of the House. The commission must include members experienced as a criminal trial judge, as a criminal prosecutor, as a criminal defense lawyer, in the administration of a statewide correction system, in the operation of a county jail, a crime victims' rights advocate and a defendants' right advocate. (The commission appointees were announced on October 15.)

## **Criminal Justice Policy Council revisions**

The Criminal Justice Policy Council (CJPC) consisted of agency directors involved with the state penal system and state law enforcement. HB 93 expands the policy council from 11 members to 17 and added the chair of the Senate Criminal Justice Committee, the chair of the House Criminal Jurisprudence Committee, a district judge, a district attorney, a county judge, a county sheriff and a county commissioner. The CJPC is subject to Sunset Act review by September 1, 1997. The Criminal Justice Coordinating Council, which made recommendations on improving the management and organization of the state criminal justice system to the CJPC, was abolished.

The CJPC is to distribute to district courts by September 1, 1992 a form to collect all information relevant to a sentence, pretrial diversion or grant of deferred adjudication in a felony case, including a plea bargain. The policy council is to

prepare a study by January 1, 1993 on statewide sentencing dynamics, including a profile of felons sentenced to prison and placed on probation, to help the Legislature revise the Penal Code and criminal sentencing statutes.

### **Special Programs for Substance Abuse**

#### **Substance abuse felony penalties**

As of October 1, 1992, courts will be authorized to impose a new "substance abuse felony punishment" on defendants convicted of a felony other than murder or a "3g" offense. (Capital murder, aggravated kidnapping, aggravated sexual assault, aggravated robbery or use or exhibition of a deadly weapon when committing a felony or when fleeing from the scene are known collectively as "3g" offenses, a reference to Code of Criminal Procedure, art. 42.12, sec. 3g.) The penalty for those convicted will be two to 10 years in prison and a maximum fine of \$10,000, but that sentence will be suspended. The alternative penalty will be confinement and treatment in a community substance abuse treatment facility operated by the community justice assistance (probation) division of TDCJ for six months to a year. The minimum term in a substance-abuse treatment facility for persons convicted of driving while intoxicated offenses will be 30 days.

After a defendant has been released from a substance abuse facility, the sentencing court will have 30 days to place the person on probation for a term that cannot exceed the prison term imposed as substance abuse felony punishment (two to 10 years in prison and a fine of not more than \$10,000). If the court takes no action, the punishment is "automatically discharged," meaning that the defendant is released. In order for a person to serve the prison sentence imposed, the court would first have to impose probation (thereby suspending the prison sentence), then *revoke* the probation, triggering the two- to 10-year prison term.

For an offender to be eligible for confinement in a substance-abuse felony facility, a pre-sentence investigation will have to find that drug or alcohol abuse significantly contributed to the person's offense and there are no other community-based programs or facilities suitable for the person's treatment, and the court has to find that the punishment would best serve the ends of justice.

TDCJ, with the Texas Commission on Alcohol and Drug Abuse, is required to develop programs to confine and treat persons sentenced to substance-abuse felony punishment. The programs have to include highly structured work, education and treatment schedules and periodic evaluations of inmates by qualified alcohol and drug abuse counselors or other professional counselors or doctors.

TDCJ is required to provide at least 12,000 beds for persons sentenced to substance-abuse felony punishments. TDCJ is authorized to provide substance abuse felony punishment facilities, not to exceed 500 beds, for persons whose probation or parole has been modified or revoked. If any of the 12,000 reserved beds are empty, TDCJ will be allowed to use them to house inmates in halfway house programs, persons whose probation or parole has been revoked and prisoners in county jails awaiting transfer to prison.

### **Drug and alcohol abuse treatment in prison**

HB 93 advanced by two years the deadlines for TDCJ-ID to begin three- and six-month programs to treat and confine separately prison inmates who need drug and alcohol abuse treatment. (The effective date of SB 828 by Lyon, regular session, outlining the drug and alcohol abuse treatment programs for prison inmates, was changed from September 1, 1993 to December 1, 1991.)

TDCJ-ID is to provide at least 450 beds for male inmates and 50 beds for female inmates for substance abuse treatment programs in fiscal 1992; at least 900 beds for male inmates and 100 beds for female inmates in fiscal 1993; at least 1,300 beds for male inmates and 200 beds for female inmates in fiscal 1994; and at least 1,700 beds for male inmates and 300 beds for female inmates in fiscal 1995.

The deadline for the Texas Commission on Alcohol and Drug Abuse to establish treatment alternatives to incarceration for certain offenses involving the use or possession of alcohol or drugs was moved up from January 1, 1994 to March 1, 1992. The deadline for a multi-agency report 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.

### **Offense of bringing alcohol and drugs into correctional facilities**

Sections of the Local Government Code and the Government Code dealing with bringing alcohol and controlled substances into municipal and county jails and the institutional division of TDCJ were moved to the Penal Code and the penalties are changed to conform to standard felony punishments. Possession of a controlled substance or dangerous drugs in private prisons was added as an offense. Offenses under this section of the Penal Code are third-degree felonies (maximum penalty of 10 years in prison and a \$10,000 fine).

## **Special-Needs Parole**

As of December 1, 1991, certain elderly, physically handicapped, terminally ill, mentally ill or mentally retarded inmates may become eligible for early special-needs parole. To be eligible for special-needs parole, an inmate must not have been convicted of capital murder, aggravated kidnapping, aggravated sexual assault, aggravated robbery or an offense involving the use of a deadly weapon (a "3g" offense). The parole panel is to evaluate an inmate's medical condition and determine that the inmate does not constitute a threat to public safety or a threat to commit further offenses.

The pardons and parole division of TDCJ is to prepare a special-needs parole plan that ensures the inmate would have appropriate supervision, service provision and placement. The parole plan of mentally ill or mentally retarded special-needs parolees must be approved by the Texas Council on Offenders with Mental Impairments.

The Texas Council on Offenders with Mental Impairments is authorized to establish a pilot program to implement a community-based alternative system to divert from the criminal justice system and rehabilitate nonviolent elderly, significantly ill or physically handicapped inmates who are not charged with or have not been sentenced for a "3g" offense.

The council, the Texas Department of Mental Health and Mental Retardation, the Department on Aging, the Rehabilitation Commission, the Department of Human Services and the Department of Health are required to work together to develop creative community-based alternatives for special-needs parolees. The executive head of the Texas Department on Aging is added to the Texas Council on Offenders with Mental Impairments. The council is permitted to employ and train a case management team to work on the pilot program and to coordinate the joint efforts of the agencies on the council.

## **Prison and Jail Populations**

### **Emergency overcrowding revisions**

HB 93 transfers the governor's responsibilities under the Prison Management Act to the director and the board of TDCJ. If an emergency overcrowding situation arises, the Board of Pardons and Paroles, acting in parole panels of three people, is authorized to act for the whole board to review and consider eligible inmates for early release. Early release reviews will continue to be triggered by the prison inmate population reaching 95 percent capacity, and in addition could be triggered if a

convicted felon (or an inmate who has had probation, parole or mandatory supervision revoked) whose paperwork has been completed for at least 45 days is waiting in a county jail for transfer to TDCJ-ID. Any inmate in a county jail whose paperwork is complete and is awaiting transfer to TDCJ-ID is eligible to be considered for an early release. Provisions of the Prison Management Act specifying the credit of administrative good conduct time are repealed.

### **Monthly reports on county jail population**

Counties are required to submit to the Commission on Jail Standards monthly reports detailing the number and type of prisoners in county jails. County auditors are required to give the commission copies of their financial and commissary operations audits of county jails. Commissioners courts, sheriffs or the commission may initiate an audit of staffing matters at a county jail.

### **Special jail requirements**

HB 93 specifies certain types of prisoners (including death row inmates, inmates confined in administrative or disciplinary segregation, some mentally ill inmates, some inmates with psychiatric illnesses, and some medically ill inmates) that county jails must house in single-occupancy cells. County jails must have adequate cells, compartments, dormitories and day rooms to separate different classifications of prisoners.

### **Boot camps**

HB 93 repeals the requirement that participants in the alternative incarceration programs (boot camps) be segregated from the general prison population.

### **Privatization of medical services study**

As of December 1, 1991, TDCJ is to monitor the average daily medical cost per inmate in each non-medical facility and to take steps to reduce costs if a cost comparison shows that the same services could be purchased from the private sector at a savings of more than 10 percent.

### **Contracting requirements**

TDCJ is prohibited from contracting for construction consulting services with a company that is under contract with the department for prison unit construction.

TDCJ is required to make a good faith effort to help disadvantaged businesses to receive at least 20 percent of construction contracts funded with bond proceeds.

### **Federal grants**

As of December 1, 1991, the Office of State-Federal Relations is to monitor, identify and assist TDCJ and local criminal justice agencies in applying for federal grants.

### **Private Prisons**

In 1987 the 70th Legislature authorized TDCJ to contract with private firms and county governments to finance, construct and operate local correctional facilities. These facilities may house no more than 500 minimum- and medium-security inmates. A private vendor must show that its prison or jail can provide services at a cost savings to the state of at least 10 percent, must comply with federal constitutional standards and applicable court orders and be accredited by the American Correctional Association.

Four private 500-bed prisons — in Kyle, Bridgeport, Cleveland and Venus — have been in operation about two years. Only minimum-security inmates within two years of release are assigned to these prisons.

HB 93 will raise from 500 to 1,000 the maximum number of prisoners that may be held in a private prison in operation after December 1, 1991. A private facility in operation before December 1, 1991 may increase its capacity from 500 to 1,000 if the commissioners court of the county in which the facility is located requests by resolution an exemption from the 500-prisoner limit. TDCJ is prohibited from contracting for more than 4,000 private prison beds.

TDCJ may contract with a private company to operate 2,000 beds in facilities constructed with proceeds from the bonds that would be authorized by SJR 4. (There is some uncertainty about whether these beds would fall under the 4,000-bed cap on private beds constructed *and* operated by private companies.)

The Texas Board of Criminal Justice may adopt rules regulating the number of federal prisoners and prisoners from jurisdictions other than Texas in a county jail.

TDCJ is authorized to contract with public or private jails or other housing facilities for temporary or permanent housing for inmates.

## **Probation and Parole Provisions**

### **Board of Pardons and Paroles administration**

The governor is to appoint the chair and two other members of the 18-member Board of Pardons and Paroles as an executive committee to coordinate the activities of the board.

### **Educational programs**

As of December 1, 1991, community supervision and corrections (probation) departments are to establish, with the help of local school systems and private entities, developmental programs for probationers who are required as a condition of probation to attain a sixth-grade educational skill level. The pardons and parole division of TDCJ may establish, with the help of school systems and private entities, developmental programs for parolees who are required as a condition of parole to attain a sixth-grade educational skill level.

### **Probation time credit**

HB 93 requires judges to give inmates credit for time spent in jail to be counted toward periods of confinement served as conditions of probation. The time is counted similarly to the way the time is counted toward sentences under previous law.

### **Custody of parolees and parole violators**

Inmates whose probation has been revoked for reasons other than the commission of a felony and are being held in the institutional division of TDCJ are eligible to be treated as pre-parolees for transfer from the institutional division to a facility such as a community residential facility or a community corrections facility. The pardons and parole division, which assumes custody of pre-parolees from the institutional division, would be able to assume custody of the inmates whose probation has been revoked as a pre-parolee as early as *one year* before the inmate's planned parole date as specified by a parole panel. (The pardons and parole division may not assume custody of other inmates scheduled for parole earlier than *180 days* before their planned parole date.)

### **Community correction facility location hearing**

As of December 1, 1991, new requirements are added to the public hearing process required when opening community corrections facilities, including requiring

that the hearing be held in the county of the facility and as close as practicable to the facility. The pardons and parole division is prohibited from changing the use of a community-based intermediate sanction facility or increasing the capacity of a facility to more than 500 residents unless the division follows statutory procedures for public notice and public hearings on the matter.

### **Work/community service programs**

**Parole programs.** HB 93 repeals the requirement that a work-program participant be placed in a facility within 100 miles of the participant's recorded place of residence. An inmate may be placed in a work facility if the inmate's parole eligibility date is *six months* to two years from the projected date of transfer to the facility, rather than *one year* to two years from the projected transfer date.

A private industry may provide worker's compensation benefits to a work-facility resident, as required for federal certification.

**Probation programs.** Prior law allowed courts to require as a condition of probation that felony probationers work a specified number of hours on community service projects or in a supervised work program. Probationers could not be required to work more than eight hours per week. As of December 1, 1991, HB 93 will allow courts to order probationers who are not employed to perform up to 32 hours per week of work probation and use the remaining hours of the week to look for employment.

Courts also may order offenders to serve all or part of their sentences by performing up to 16 hours a week of community service. As of December 1, 1991, HB 93 will allow courts to order offenders who are unemployed perform up to 32 hours per week of community service and to use the remaining hours to look for work.

**Community service supervision liability waiver.** Sheriffs, or their employees, county commissioners, county employees, county judges, community corrections and supervision department or restitution center employees and other public employees are exempted from liability for damages arising from acts or failures to act in connection with community service programs.



## **Community justice council revisions**

Under prior law, forming a community justice council was a prerequisite to establishing a community corrections (probation) facility. HB 93 removes that prerequisite and requires community justice councils to be established by district judges or judges served by a community supervision and corrections (probation) department. HB 93 broadens statutory language concerning the makeup of community justice councils so that it applies to community supervision and corrections *departments* (not the community corrections *facilities*, as under previous law) and adds a defendants' rights representative to the councils.

## **Identification and Records**

### **Criminal justice information system**

HB 93 makes numerous amendments to the Code of Criminal Procedure Chapter 60, effective December 1, 1991, concerning the implementation of the statewide criminal justice information system established by the 71st Legislature in HB 2335 by Hightower. The criminal justice information system is a data base composed of the Department of Public Safety's (DPS) computerized criminal history system, which contains arrests, disposition and other criminal history information and the corrections tracking system, which contains information on all offenders under TDCJ supervision.

The system must be operational by January 1, 1993. The Criminal Justice Policy Council, DPS and TDCJ are required to hold at least three regional public hearings concerning the criminal justice information system. The Criminal Justice Policy Council, DPS, TDCJ and the Department of Information Resources are required to establish a working group to expedite the implementation and improvement of the information system.

Before allocating any state or federal grants to a county, state agencies are required to certify that the county has supplied TDCJ and DPS certain county criminal history records.

### **Department of Public Safety records**

As of December 1, 1991, the DPS bureau of identification and records is to keep pertinent information, photographs and fingerprints of all persons arrested for, charged or convicted of a criminal offense (instead of persons convicted of a felony and well-known and habitual criminals, as under prior law), regardless of whether the

conviction was probated. In addition to keeping track of the number and nature of crimes known to have been committed in the state, the bureau also will have to keep track of offenses that were *reported*.

The DPS will be able to charge any person and any non-criminal justice entity (not just non-criminal justice *state agencies* as under current law) fees for criminal history reports. (A provision in HB 11, first called session, raised fees for reports based on a name from \$5 to \$10, except that checks based on names that are submitted electronically on magnetic tape would be \$1. Fees for reports based on fingerprints rose from \$10 to \$15.) The fees will be deposited in the Operators and Chauffeurs License Fund.

### **Hate-crime reporting**

The DPS bureau of identification and records is to establish and maintain a central repository to collect and analyze information about crimes that are motivated by prejudice, hatred or the advocacy of violence. Local law enforcement agencies are required to submit to the DPS any information concerning hate crimes that the department requires of them. The DPS must submit an annual report with an analysis of the information to the governor and Legislature. The names of victims and defendants are subject to all statutory confidentiality requirements.

### **Thumbprint record**

HB 93 changes requirements concerning taking the fingerprints of persons convicted of felonies and misdemeanors to require that right thumbprints be used instead of prints from the right index finger.

## **Criminal Justice Spending Revisions**

### **Earmarking TDCJ appropriations**

HB 93 specifies how TDCJ is to spend some of the funds appropriated by HB 1, the General Appropriations Act for fiscal 1992-93:

- \$113.4 million for payments to counties;
- \$5.3 million for a pilot program for special needs parolees;
- \$1.1 million to implement the criminal justice data report and the study on sentencing dynamics;

- \$1 million for the Texas Punishment Standards Commission;
- \$16 million for presentence investigations;
- \$40 million for performance rewards for the counties;
- \$690,000 for administration duties of the Commission on Jail Standards;
- \$17.1 million for operations of the substance abuse felony punishments;
- \$300,000 to Sam Houston State University and the Texas State University System for criminal justice enhancement;
- \$2 million to *TDCJ* for a juvenile boot camp in Harris County. (HB 1, first called session, the General Appropriations Act, had appropriated \$2 million to the *Juvenile Probation Commission* for a Harris County juvenile boot camp.)

Any funds not expended for these uses may be applied to the operation of additional substance abuse punishment facilities.

### **Contingent appropriation**

Along with the \$672.1 million appropriated for construction and repair of correctional facilities, contingent on voter approval of SJR 4 (see page 26), HB 93 appropriated an additional \$39 million to TDCJ to implement the provisions of HB 93, contingent on the comptroller certifying that sufficient revenue was available. If revenue were not available, the \$39 million was to be taken from the Capitol restoration project and revenue bonds issued to replace the transfer. (The transfer was not necessary since the comptroller certified that sufficient revenue was available.)

### **Judicial system impact notes**

HB 93 requires the Legislative Budget Board (LBB) to prepare judicial impact notes identifying the five-year probable costs and effects of each bill or resolution that has an identifiable and measurable effect on the dockets, workloads, efficiency, staff requirements, operating resources and material resources of Texas courts. The notes must be attached to a bill before a committee hearing on the bill may be held.

## RESTRUCTURING OF STATE AGENCIES

### SB 2: Reorganization of Environmental Agencies

SB 2 by Parker, first called session, will consolidate over the next two years the Texas Water Commission, the Texas Air Control Board, certain environmental protection divisions of the Texas Department of Health, the Water Well Drillers Board and the Board of Irrigators into a new agency to be called the Texas Natural Resources Conservation Commission (TNRCC). The bill also conforms state law to the Federal Clean Air Act amendments, creates new fees, establishes criminal penalties for pollution offenses and makes other changes in environmental law. SB 2 took effect September 1, 1991, except for provisions specifically given later effective dates.

#### Texas Natural Resources Conservation Commission

**New agency.** SB 2 creates the TNRCC as of September 1, 1993. The governor will appoint three full-time commissioners for the new agency. The Texas Water Commission (TWC) will form the nucleus of the new commission. Eventually, the Texas Air Control Board, the Water Well Drillers Board, the Board of Irrigators and some sections of the Department of Health will be transferred to the TNRCC by being merged into the TWC.

**Department of Health.** By March 1, 1992, the following sections of the Health Department will be transferred to the Water Commission: treatment, storage and disposal of solid waste; protection of public water and regulation of drinking water; regulation of on-site sewage disposal systems; administration of on-site wastewater treatment research and disposal of certain radioactive substances.

**Water well drillers and irrigators.** On September 1, 1992, both the Texas Water Well Drillers Board and the Board of Irrigators will be abolished and their functions transferred to the TWC. A nine-member Water Well Drillers Advisory Council and a Texas Irrigators Advisory Council of six licensed irrigators and three members of the public will be appointed by the TNRCC; each council will elect its chair. Members from existing agency boards will become interim members on the Water Well Drillers Advisory Council and the Texas Irrigators Advisory Council until they are reappointed or replaced by the TNRCC board.

**Air Control Board.** As of September 1, 1993, the Texas Air Control Board (TACB) will be abolished and its functions transferred to the new TNRCC. The TACB will become the air quality program of the TNRCC. The executive director of

the TACB as of August 31, 1993, will be named deputy director for air quality. The air quality program will remain intact until at least 1997, and its employees may be terminated only for poor performance and unacceptable conduct.

**Transition.** Until September 1, 1993, the governor, with the consent of the Senate, may appoint members to serve jointly on the boards of the TACB and the TWC.

The TNRCC board must appoint an executive director by November 1, 1993. By January 1, 1994, the executive director must appoint as deputy director for air quality the person serving as executive director of the TACB on August 31, 1993 and also will name a deputy director for water, a deputy director for waste management and a deputy director for administration. All four deputies will report to the executive director and serve in the transitional organization of the TNRCC. On September 1, 1997, the statutory provision providing for deputy directors will expire.

The TNRCC executive director must complete a study on consolidating support functions by March 1, 1994. These functions will be combined, to the extent feasible, by September 1, 1994.

By September 1, 1994, the executive director must distribute a report including an analysis of how other states organize regional offices for consolidated environmental agencies and recommendations concerning integration of regional offices, laboratories, enforcement policies, and legal enforcement staff. These recommendations will be implemented, when practical, by September 1, 1996.

By January 1, 1995, the executive director must distribute a comprehensive report about streamlining permitting procedures, as well as the costs and benefits of consolidating regulatory databases and computer systems. Recommendations from this report will be implemented no later than September 1, 1997.

At least 20 percent of the administrative workforce that administered state environmental laws in the 1989-91 fiscal biennium must be cut. Employees of the TACB and the Department of Health may not be fired in greater numbers than other employees of the TNRCC because of agency reorganization.

Administrative hearings on applications for permits and prehearing proceedings that commenced before the effective date of the reorganization may not be delayed or continued as a result of the reorganization.

The General Services Commission may not extend the building leases of the current TWC and TACB without the consent of the governor, and the agency is directed to try and find a central location for the TNRCC.

The TNRCC will be subject to review and expiration under the Sunset Act on September 1, 2001.

**Legislative Natural Resources Board.** A new Legislative Natural Resources Board is composed of the chairs of the House Environmental Affairs Committee, House Natural Resources Committee, House Government Organization Committee, Senate Natural Resources Committee, Senate Finance Committee and Senate State Affairs Committee. The board will oversee and review implementation of the state's natural resource policy and the transition to the TNRCC and will terminate its duties on January 1, 1994.

### **Jurisdictional revisions**

**Permits and hearings.** The Water Commission must decide to issue or deny a permit within 180 days of the receipt of a complete application or application amendment. Permits issued under federal programs are exempted.

The bill also provides for public hearing procedures, including details of notification, location and timing of hearings for both air and solid waste permit hearings. Changes made later than 30 days before a hearing require resubmission of the entire application.

**Regulation of radioactive materials.** The TNRCC will have sole authority to regulate and issue licenses for the disposal of radioactive substances. The TNRCC and the board of health are required to adopt a memorandum of understanding defining their respective duties concerning licensing of these sites.

SB 2 also requires the Low-Level Radioactive Waste Authority to collect a low-level radioactive waste planning and implementation fee, so the board may reimburse itself as much as possible for the costs of administering, planning and building the low-level radioactive waste disposal site. Fees will be periodically revised, based on projected low-level waste volume and hazard.

If the state enters into a compact with another state or states for disposal of low-level radioactive waste, the other state or states will be required to pay for community assistance projects in counties where the site would be located. The payment would be at least \$1 million or 10 percent of the amount contributed by the other state or states. (Prior law stipulated payment of an amount not to exceed the

lesser of \$1 million or 5 percent of the amount contributed by other state/states towards construction of the site).

SB 2 also requires the TNRCC to consult with the Railroad Commission before adopting rules regulating naturally occurring radioactive materials (NORMs). The bill requires the TNRCC to adopt a memorandum of understanding with the Railroad Commission defining their respective enforcement duties over NORMs that occur from the production of oil and gas. Preference will be given to the Railroad Commission for enforcement involving oil- and gas-related NORM activities.

**Regulation of water well drillers.** The TNRCC will test and license drillers, establish license fees and require accurate well logs. Landowners with abandoned wells on their property must have the wells capped if the well are not in use. A well is considered in use if its casing, pump and pump column are in good condition.

A driller's license may be revoked if, among other reasons, well logs are not kept or if either a driller or installer fails to inform someone that their well was a pollution hazard and needed to be capped. Failing to comply with a provisions of the Water Well Drillers Act can result in both administrative penalties of up to \$2,500 (after an opportunity for a public hearing) and civil penalties of \$200 to \$1,000 per day of noncompliance.

**Regulation of water well pump installers.** The TNRCC will test and license water well pump installers. Installers must notify the TNRCC and landowners when a well needs to be plugged or capped to avoid injury or pollution.

**Regulation of irrigators.** Rules are to be adopted governing how licensed irrigators connect to public or private water supplies and complaint procedures are to be established. Annual certificates of registration will be issued upon payment of a fee and passage of an exam administered. No one may act as an irrigator or an installer without being registered. Persons who do occasional yard sprinkler work are among those exempted from regulation.

Licenses may be revoked or suspended in certain cases, and administrative penalties up to \$1,000 may be assessed, after hearings or judicial review of the decision of the TNRCC. Falsely representing oneself to be a licensed irrigator or installer is a class C misdemeanor (maximum penalty of a \$500 fine).

**Regulatory assessment.** Providers of potable water or sewer utility service are required to collect a regulatory assessment from retail customers to be used by the TWC to pay the costs of regulating districts, water supply or sewer service corporations and public utilities. The assessment does not apply to water not treated

for human consumption. Fees collected are to be paid into the General Revenue Fund.

**Highway project review.** The highway department is directed to submit environmental reviews and mitigation proposals concerning its projects to the TNRCC and the Parks and Wildlife Department for comment. The TNRCC and Parks and Wildlife must be given at least 30 days to respond prior to the highway department's release of its written report explaining project decisions.

**Texas Hazardous Materials Safety Council.** The Hazardous Materials Safety Council coordinates matters concerning hazardous materials in the state. SB 2 reduced the council from 12 to nine members, removing representatives of the Health Department, the Air Control Board, the Water Commission and the Governor's Office and adding a representative of the TNRCC.

**Wastewater Treatment Council.** SB 2 also removes one employee of the Health Department and adds two employees from the TNRCC to the On-site Wastewater Treatment Research Council. The Health Department, at the direction of the council, implements council decisions. The council may enter into an interagency contract with the Health Department to provide support to improve the quality of wastewater treatment and reduce costs to consumers. The council may award competitive grants to support demonstration projects by governmental entities or public or private research centers.

### **Civil and criminal penalties for environmental violations**

**Revised penalties.** SB 2 increased civil penalties and criminal offenses and penalties for violations of environmental laws. The TWC, TACB and Department of Health are required to consult with the attorney general concerning which cases must be referred to the attorney general for enforcement and whether criminal or civil enforcement is appropriate. Certain types of violators must be referred to the attorney general for judicial enforcement.

Hazardous-waste offenses are slightly modified, with separate punishment provisions for "persons other than an individual (a corporation, association etc.), which includes sole proprietorships, water supply companies and other entities.

The penalty provisions are doubled when a violator has been previously convicted of a violation of the same section. Fines may be split evenly between the state and any local government involved in the prosecution, or up to 75 percent can be awarded to the state or local government at the discretion of the judge, based on which entity bore more of the burden of prosecution.



It is an offense to tamper with pollution-control or monitoring devices, make an unpermitted release of hazardous waste or fail to make any report or notification required by a "a valid and currently effective order, rule or permit of the appropriate regulatory agency." Similar provisions in the bill relate to water quality control.

The offense of knowing endangerment by use of hazardous waste is revised to apply to a person who "intentionally or knowingly transports, possesses, stores, exports or disposes of. . . hazardous waste in violation of (law) and thereby knowingly places another person in imminent danger of death or serious bodily injury." The bill sets a minimum fine of \$2,500 for individuals (in addition to the current maximum of \$250,000 and 15 years), and \$5,000 to \$1,000,000 for corporations. It increases the fine if the offense results in death or serious bodily injury, to \$5,000 to \$500,000 and a prison term of two to 30 years for an individual, or \$10,000 to \$1,500,000 for a corporation or association. Three additional hazardous waste endangerment offenses carry lesser penalty ranges.

In determining whether an individual charged with a hazardous waste offense knew that a violation placed a person in imminent danger of death or serious bodily injury, a defendant is responsible only for his own personal knowledge.

The bill sets up criminal enforcement provisions for water quality that parallel the provisions concerning hazardous waste, with some exceptions.

The bill creates a criminal penalty for failure to pay fees under the Solid Waste Disposal Act and sets a penalty of up to twice the amount of the fee and, for individuals, up to 90 days in jail.

A court entering a conviction under the Solid Waste Management Act against a corporation or association may order that entity to give notice to any person the court deems appropriate. A fine entered in a criminal action against a corporation for violation of these laws is enforceable in the same way as a civil judgment.

Ignorance of the law is not a defense to prosecution for violations of the Solid Waste Management Act or water quality laws. Under these laws, a court may compel a witness to testify and give the witness immunity.

**Affirmative defenses.** The bill provides an affirmative defense when an endangered person freely consented to a risk and the danger was a foreseeable hazard of the person's occupation, business or profession.

It is an affirmative defense to criminal prosecution for harm caused by hazardous waste that employees were carrying out normal activities and were acting

under orders from their employer, unless the employees' actions were "knowing and willful."

The Health Department, the TWC and the TACB may not assess an administrative penalty if a local entity is diligently prosecuting the same violator for the same offense.

### **Miscellaneous provisions**

**Recycling revisions.** SB 2 amends SB 1099, regular session, the 120-day moratorium on new permits for hazardous waste sites, to exempt facilities that are legitimately recycling waste. It provides that "recycling" by hazardous waste facilities does not include certain procedures such as landfilling, incineration, deep well injection, etc.

SB 2 also revises the waste-tire recycling section of SB 1340, regular session, the omnibus recycling law. Payment for tires can be made only for tires *collected* and shredded on or after April 1, 1992, the prohibition against charging a tire collection fee will apply only to tires collected on or after April 1, 1992, tire processors have to be in compliance with TACB emission control rules and a Type VIII tire monofill may qualify for the waste tire recycling program.

**Litter regulation.** SB 2 amends the Health and Safety Code to strengthen the regulation of littering, providing criminal and civil penalties for illegal disposal of litter and allowing counties to regulate litter.

Counties bordering on the Gulf of Mexico may levy a hotel/motel tax to clean and maintain public beaches and acquire, furnish or maintain facilities that enhance public access to beaches.

**Hydrographic surveys.** SB 2 allows a one-time transfer of up to \$425,000 from the Water Assistance Fund administered by the Water Development Board for hydrographic surveys. On the request of a political subdivision, the board may perform such a survey to determine, among other things, reservoir storage capacity, sedimentation levels, projected water supply availability and potential solutions to these problems. The water development board will, by rule, prescribe fees for these surveys to cover the costs of the program.

**Natural gas purchase approval.** The General Land Office must approve contracts entered into by a state agency for the purchase of natural gas.

**Houston area wetland mitigation.** SB 2 authorizes Houston and adjoining counties and any state agency to establish and maintain a wetland mitigation bank in compliance with federal regulations. Houston and adjoining counties are permitted to purchase, lease or condemn property for a wetland mitigation bank or buffer zone and to issue bonds and levy taxes for the project.

**Deadline for Houston to supply services.** The TWC may charge the city of Houston up to \$1,000 a day for failing to provide municipal water and sewer services in annexed areas within 4.5 years after an area is annexed. The fines are to be used to provide water and sewer service to residents of the city.

**Extending ban on discharges into Salado Creek.** The TWC is prohibited from issuing discharge permits into Salado Creek, a tributary of the Lampasas River, or any body of water flowing into Salado Creek, until April 1, 2001.

**Nuclear plant surcharge (repealed).** SB 2 would have required electric utilities that operate nuclear reactors to pay a 5 percent surcharge over the current tax imposed on gross receipts that the utilities pay. The money was to be used to reimburse general revenue funds expended in selecting, seeking approval of, and constructing a low-level radioactive waste disposal facility. However, this provision was deleted by HB 11 by Hury, first called session, the omnibus revenue bill.

## **SB 2: Implementation of Federal Clean Air Act**

### **FCAA amendments**

SB 2 provides for state implementation of the 1990 Federal Clean Air Act (FCAA) amendments, adding FCAA definitions and making state statutes conform to EPA requirements.

In November 1990 President Bush signed into law the new FCAA amendments requiring the states to comply with federal standards or risk losing federal funds and control over their environmental regulatory programs in a variety of areas. For example, if an acceptable air quality plan is not submitted for cities that cannot meet air quality goals (nonattainment areas), the state could face a cutoff of federal highway funds.

The FCAA amendments include provisions concerning urban pollution, toxic air emissions, acid rain, ozone depletion, permits and enforcement. The FCAA is divided into 11 titles: nonattainment (Title 1), mobile sources (Title 2), air toxics (Title 3), acid rain (Title 4), permits (Title 5), stratospheric ozone depletion (Title 6),

enforcement (Title 7), miscellaneous provisions (Title 8), clean air research (Title 9), disadvantaged business concerns (Title 10) and clean air employment transition assistance (Title 11).

Texas is especially affected by the requirements for attaining certain specified air quality standards, the new toxic air emission control program, new automotive and gasoline emission controls and the permitting and enforcement programs.

According to the Texas Air Control Board, by November 15, 1991, the Governor's Office must submit a state implementation plan for El Paso to achieve "attainment" of federal standards for particulate matter. Otherwise, the state will face sanctions.

By November 15, 1992, the state must have a revised vehicle emissions inspection and maintenance program for motor vehicle emission controls operating in Dallas/Fort Worth, Houston/Galveston, Beaumont/Port Arthur and El Paso.

By November 15, 1992, the state also must issue regulations for Dallas/ Fort Worth, Beaumont/Port Arthur and El Paso on "reasonably available control technology" and Stage 2 vapor recovery, as well as inventories of volatile organic compound and nitrogen oxide emissions and sources.

### **TACB permits**

The FCAA amendments require states to issue "federal operating permits" to certain types of facilities, depending on their size and emissions. If the state does not issue these permits, the EPA may take over the state permitting program and the state may lose federal funds.

SB 2 broadened the permitting authority of the Texas Air Control Board to comply with federal requirements. The TACB may allow a general permit for numerous similar sources or a single permit at multiple facilities located at the same site. A federal operating permit may be issued to a source in violation only if the permit includes a compliance plan that fulfills federal standards.

SB 2 also made conforming revisions to the statutes in the following areas: permit consolidation, sampling and monitoring requirements (which can be at the expense of the permit holder), permit applications, preconstruction permits, determination of administratively complete applications, notification of interested parties and permit hearings.

## **Preconstruction permits**

Before a facility is constructed or an existing site is modified, a preconstruction permit must be obtained from the TACB. Prior to issuing a preconstruction permit, the TACB must determine if the proposed facility will use the best control technology that is technically practical and economically reasonable. Before issuing, renewing or amending a permit, the TACB must consider the facility's past compliance history.

A preconstruction permit is not required for construction or modification of a facility begun on or before August 30, 1971, if the facility complies with registration requirements in existence as of November 30, 1991. SB 2 also removed the statutory requirement for obtaining a state operating permit.

## **Federal operating permits**

The FCAA amendments require states to adopt a definition of "federal source." A federal source, as defined by SB 2, includes all facilities of certain sizes and those that discharge specific qualities and types of emissions. Operators of federal sources are required to obtain federal operating permits from the state.

SB 2 provides detailed instructions regarding the administration and enforcement of federal operating permits, including what emission control technology may be required for permit holders and time limits for review and renewal of permits. Initial permits may not exceed five years, and a federal operating permit (if the board finds the facility would meet state requirements) may be delayed no longer than 18 months after an administratively complete application is received, except for initial applications received in the first year.

In issuing, amending or renewing a federal operating permit, the TACB may consider the previous five years of compliance history. A person affected by the TACB's failure to act on a permit may obtain judicial review. A permit issued or renewed by the TACB on or after December 1, 1991 is subject to review every five years. Permits issued before December 1, 1991 are subject to review every 15 years. The TACB is to notify permit holders at least 180 days before a renewal application is due.

SB 2 specifies when a public hearing is required for a federal operating permit, the time for public comment and details about permit decisions and notice and appeal of those decisions. It also expands the TACB's authority not only to revoke a permit but also to terminate or modify it.

Notice of intent to obtain a permit must be published in the local newspaper of or nearest to the municipality where the facility will be located, at least 30 days before the hearing.

The TACB may exempt some facilities from preconstruction or operating permit requirements under certain circumstances.

Federal operating permit provisions in SB 2 will take effect on the day the executive director of the TNRCC publishes in the *Texas Register* notice that the Environmental Protection Agency (EPA) has approved the state's permitting program under Title V of the FCAA amendments of 1990.

### **Clean Air Act fees**

SB 2 revises the permit application, renewal and inspection fee schedule, proposing an inspection fee of not less than \$25 nor more than \$75,000. (The fees were \$50 to \$50,000). The TACB is to charge a yearly federal operating permit fee based on how much pollution a source emits. The fees are to help cover the costs of implementing the FCAA and may be adjusted for inflation.

Clean Air Act funds include fees collected by the TACB, appropriations, and a \$2 fee collected by the Department of Public Safety for inspection stickers, all of which are to be deposited in a new Clean Air Fund. All unexpended and unobligated money remaining in the Clean Air Act Fund on the last day of the fiscal biennium goes to general revenue. No later than March 1, 1992, the TNRCC must adopt rules necessary to collect and administer fees.

### **FCAA criminal offenses**

SB 2 establishes criminal penalties for failure to pay fees, false statements to the TACB, tampering with monitoring devices, recklessly causing air pollution, emitting an air contaminant that seriously endangers another's health, or intentionally causing pollution or emitting an air contaminant *knowing* that this seriously endangers another's health.

The TACB is to consult with the attorney general about possible criminal prosecution of alleged violations, and if the TACB requests, the attorney general may offer technical assistance. Before the TACB settles a civil or administrative suit, the public may comment in writing on the proposed order, and if it is appropriate, the TACB or attorney general may withdraw consent to an order after reading the comment.

**Penalties.** The penalty for violating a permit is 180 days in prison and/or a fine of \$1,000 to \$50,000 for an individual, and a fine of \$1,000 to \$100,000 for a corporation. The penalty for intentionally failing to pay a fee is 90 days in jail and/or up to twice the amount of the required fee for an individual, and a fine of up to twice the required fee for a corporation.

The penalty for making a false statement or failing to notify or report to the TACB or tampering with a monitoring device is a year in jail and/or a fine of \$500 to \$100,000 for an individual, and a fine of \$1,000 to \$250,000 for a corporation.

The penalty for recklessly emitting air contaminant that places another person in danger of death or serious injury is one year in jail and/or a fine of \$1,000 to \$100,000 for an individual, and a fine of \$2,500 to \$250,000 for a corporation.

The penalty for a intentionally or knowingly emitting an air contaminant *with the knowledge* another person is being placed in danger of death or serious injury is up to five years in prison and/or a fine of \$1,500 to \$150,000 for an individual, and a fine of \$3,000 to \$300,000 for a corporation.

The maximum punishment and fine may be doubled for anyone convicted of a second offense under this section.

**Affirmative defense.** It is an affirmative defense to prosecution if the person who was harmed, knowing the risks involved, freely consented to exposure to a reasonably foreseeable hazard of a job, business, medical treatment or scientific experiment conducted by professionally approved methods. It also is a defense to prosecution if the person charged was carrying out an employer's orders.

The responsibility of a defendant in a criminal prosecution charged with intentionally harming another person is limited by the defendant's actual awareness or belief.

### **Vehicle emissions inspection and maintenance**

Since the EPA has not yet decided what it will require for the state's vehicle inspection and maintenance program, SB 2 delegates authority to the TACB to implement whatever program the EPA eventually requires.

A vehicle inspection and maintenance program may be established by the Public Safety Commission. A program must be established if a county does not meet certain national ambient air quality standards or if the program is required by law.

The TACB may provide inspection certificates for reinspection stations and establish vehicle inspection fees.

A vehicle emission program may be adopted in counties that are *not* under federal mandate to have one if the TACB, the county and the largest city in the county adopt resolutions providing for the program.

Under a registration-based vehicle-emission enforcement program, the highway department could not register a vehicle without proof of compliance with emission standards. (The highway department would have to approve any registration-based program.) If repairs were necessary for compliance, the TNRCC could by rule require that the inspection occur at an authorized, licensed station.

The TACB may assess fees for an inspection program that will reasonably cover the costs of the program. The TACB is to adopt standards for inspection stations that are authorized and licensed by the state, make a reasonable effort to preserve the current, decentralized system and develop a program to ensure quality control. The TACB also is to coordinate with the highway department and local transportation agencies to implement measures necessary to maintain national ambient air quality standards and protect the public health.

The DPS may assess a fee of \$10.50 for compulsory inspection of a vehicle. (Previously the fee was \$8.50). Part of the fee is to be used to pay the expense of administering the program.

The TACB is to determine the appropriateness of adopting the stricter motor vehicle emission standards and compliance program of the state of California and report its findings to the 73rd Legislature.

The TACB may not, unless authorized by the Legislature, establish fuel content standards beyond EPA standards unless they are needed to attain federal standards in a state implementation program or to protect the public health. The TACB may not require the use of stage II vapor recovery systems (to catch gas fumes at gas stations) unless the EPA requires it, it is necessary in order to obtain FCAA attainment standards for ozone ambient air quality standards or it is deemed necessary by the TACB to protect the public health.

Automobile dealers, unless prohibited by federal guidelines, may perform emission repairs on vehicles under warranty.



### **Border air quality**

The TACB is required to develop rules and control programs that meet FCAA requirements in establishing an international border air quality plan. The plan must be adequate to attain national ambient air standards except for emissions that come from across the border.

### **Air contaminants control**

The TACB is authorized to control air contaminants (consistent with federal law) to protect against adverse effects from acid rain, ozone depletion and climactic changes.

### **Small business assistance program**

By November 15, 1992, the TACB is to establish and submit to the EPA a small business stationary-source technical and environmental assistance program. The program must include a seven-member compliance advisory panel made up of business owners, the public and a member of the TACB.

## **HB 9: Creation of the Department of Transportation**

HB 9 by Cain, first called session, creates a Texas Department of Transportation (TXDOT) governed by a three-member commission of gubernatorial appointees. As of September 1, 1991, the Texas Department of Highways and Public Transportation and the Texas Department of Aviation were abolished and became part of the new department. The Texas Motor Vehicle Commission will be abolished on September 1, 1992 and replaced with a motor vehicle division established in TXDOT. The Legislature intends for the Texas Turnpike Authority to be moved to TXDOT in 1997, if voters at the November 5, 1991, general election approve HJR 10, allowing TXDOT to spend funds on turnpike projects, and following studies by the Sunset Advisory Commission. Also, the High Speed Rail Authority will be abolished and its functions transferred to the Texas Railroad Commission on September 1, 1995.

HB 9 reduces the number of highway districts, allows for more highway and vehicle maintenance work to be contracted out to the private sector, prohibits payment to contractors before the 10th of the month, changes the allocation of state public transportation funds, requires heavy trucks to pay highway maintenance fees, changes the way utilities are reimbursed for line relocations on interstate highways, requires issuance of special license plates for disabled persons and names a highway for U.S. Sen. Lloyd Bentsen.

### **TXDOT creation**

The new TXDOT is governed by the Texas Transportation Commission, composed of three gubernatorial appointees serving staggered, six-year terms. The initial members will serve staggered terms ending in 1993, 1995 and 1997. Appointees to the commission are required to reflect the diversity of the population of the state, and at least one member must be from a rural area. Commission members are entitled to compensation as determined by the Legislature.

The governor is to designate one commissioner to serve both as chair and as the commissioner of transportation. The commissioner is to act as liaison between the governor and the department, report to the governor on privatization efforts, develop recommendations for the organization of the department, establish a civil rights division in the department and serve as a liaison with the Office of State-Federal Relations.

The commission names the executive director, who must be a registered professional engineer experienced in transportation planning, development, construction and maintenance.

By January 1, 1992, TXDOT is to be organized into separate divisions to accomplish the department's duties: aviation, highways and roads, public transportation and motor vehicle titles and registration.

Hiring preference is to be given to those formerly employed by the State Department of Highways and Public Transportation, Department of Aviation and Turnpike Authority for similar positions.

TXDOT is to implement a statewide transportation plan containing all modes of transportation, including highways and turnpikes, aviation, mass transportation, railroads, high-speed railroads and water traffic.

The commission must consider the recommendations of advisory committees within the department when developing the annual list of projects and rules.

The department is to seek comments from other state agencies and political subdivisions of the state with responsibility for transportation, and when appropriate, enter into memoranda of understanding with them.

TXDOT will expire on September 1, 1997, under the Sunset Act, unless continued by the Legislature.

**Texas Department of Highways and Public Transportation.** The Texas Department of Highways and Public Transportation was abolished on September 1, 1991 and replaced by the new Texas Department of Transportation. Until the governor appoints the members of the new Texas Transportation Commission, the members of the former State Highway and Public Transportation Commission will serve as the new commission.

**Highway districts.** The transportation commission is required to divide the state into no more than 18 highway districts by September 1, 1992, although it may provide for as many maintenance and construction offices as the department deems necessary. (Currently the state is divided into 24 districts.) The commission is to review periodically the necessity for the number of districts and support operations and report its findings to the Legislative Budget Board.

**State park roads.** TXDOT is required to construct, repair and maintain roads and acquire land needed for right of way purposes in and adjacent to state parks. The expenses incurred will be paid for by funds from the State Highway Fund.

**Utility relocation costs.** Utilities eligible for relocation reimbursement by the state due to road construction must relocate in a timely fashion as specified in their

agreement with the department. The agreed period cannot be less than 90 days. For each 30-day period by which a utility exceeds the agreed limit, the department may reduce the reimbursement by 10 percent, unless the delay was caused by something beyond the control of the utility.

**Highway maintenance fee.** Operators of overweight vehicles are required to pay a highway maintenance fee based on the weight of their vehicles. The fees range from \$50 to \$125. An applicant for a permit for a vehicle that weighs over 200,000 pounds must also pay a vehicle supervision fee determined by the department.

**Contractor payments.** Payments to contractors may be made no sooner than the 10th of the month after the month the work is performed. This provision will take effect September 1, 1992, or the date the comptroller certifies that an electronic funds transfer system is ready for payment of contractors, whichever is sooner.

**MTA funding.** HB 9 changes the allocation of state public transportation funds, eliminating state funding for Metropolitan Transit Authority districts that are located in urban areas with populations of more than 200,000 and are supported by a local sales tax. Only the city of Laredo will continue to receive state public transportation funds. Of the remaining transportation funds, 50 percent of the money will go to urban areas with populations of over 50,000 that are not served by a transit authority and 50 percent will go to urban areas with population of less than 50,000.

**Texas Department of Aviation.** The aviation department was abolished on September 1, 1991 and its powers, rights and duties were transferred to TXDOT, where an aviation division was created. A six-member aviation advisory committee is to be appointed by the transportation commission to provide advice on aviation matters. The Department of Aviation operating account has been created as a special account in the State Highway Fund.

**Texas Motor Vehicle Commission.** The Texas Motor Vehicle Commission is to be abolished on September 1, 1992 and replaced with a motor vehicle division to be created within TXDOT. Hiring preference is to be given to those employed in similar positions at the Texas Motor Vehicle Commission. The executive director of TXDOT is to appoint the director of the motor vehicle division, and a six-member motor vehicle board, appointed by the governor for six-year terms, will be created to advise TXDOT about motor vehicle matters.

**Texas Turnpike Authority.** HB 9 expresses the Legislature's intent that the Texas Turnpike Authority be consolidated within TXDOT in 1997 if HJR 10, the proposed constitutional amendment allowing TXDOT to spend state money on toll projects (Proposition 2), is approved by the voters on November 5, 1991. If HJR 10

is approved, the Sunset Advisory Commission is to report the Legislature in 1993, 1995 and 1997 on whether the authority should remain independent or be consolidated with TXDOT, the costs of consolidation, its effect on federal funds and the need for turnpikes in the future.

TXDOT is to adopt rules regarding privately built and operated turnpike projects by January 1, 1993. The rules must include consideration of environmental and economic impacts, integration into the state highway system and, if the project is located in a county bordering Mexico, its impact on the free flow of trade between Texas and Mexico.

Private turnpike projects that connect to part of the state highway system must be approved by TXDOT. The commission may not approve a project before its new rules are in place. A private entity may, however, proceed with pre-construction activities (like environmental reviews) before the adoption of the rules.

**High Speed Rail Authority.** The Texas High Speed Rail Authority is to be abolished on September 1, 1995, and its powers, duties, and rights transferred to the Railroad Commission. The authority is to be administered by a board of 11 directors serving staggered six-year terms and including the chairs of TXDOT and the turnpike authority, all three railroad commissioners and, eventually, six appointees of the governor. All directors will have equal voting rights. The governor will designate the chair and vice chair of the board. The Administrative Procedures Act applies to all rail proceedings.

The Railroad Commission may adopt memoranda of understanding with TXDOT to facilitate the planning, coordination and construction of high-speed rail facilities. Advisers of the authority are exempt from the employee classification system.

The Railroad Commission is prohibited from awarding a franchise that would permit high-speed rail service along a route already served by a high-speed rail facility when a franchise agreement is in effect.

### **Driver's license and vehicle registration provisions**

**Driver's license application.** New Texas residents must submit proof that their vehicles are properly registered before they may be issued a driver's license by the Department of Public Safety (DPS). A registration receipt issued by a resident's county tax assessor-collector suffices as proof.

An application for a driver's license must be submitted with the required fee before an exam is given. Applicants who do not qualify after the third written or driving exam must pay a new application and fee.

**Limits on DPS troopers.** No more than 100 commissioned DPS peace officers plus supervising personnel may be assigned to staff a driver's license facility. A five-year plan for reducing the number of DPS troopers in driver's license offices is to be submitted to the Legislative Budget Board.

The DPS is required to reduce by at least 25 percent the number of DPS troopers assigned to the motor vehicle inspection and maintenance program by September 1, 1992 and keep reducing the number until 1995, when DPS troopers would no longer administer the program. The DPS is required to evaluate the need for these officers to administer the program and submit its findings to the Legislative Budget Board in budget requests by July 1, 1992.

**Other provisions.** County tax assessor-collectors are authorized to delegate to a "full service deputy" the authority to use TXDOT data processing equipment and software for the titling and registration of motor vehicles.

Applicants for a driver's license must be informed about and provided the opportunity to complete a voter registration form. The DPS is to use a form combining a license application with a voter registration form and issue a receipt upon receiving a completed voter registration form.

## **Privatization**

**Highway maintenance contracts.** TXDOT is encouraged to increase the use of private contractors for highway maintenance contracts. By 1992, not less than 30 percent of the department's yearly expenditures for maintenance contracts must be for contracts awarded by competitive bidding; this will be raised 5 percent each year, to a 50 percent contracting level for fiscal 1996 and thereafter. The minimum expenditures for maintenance contracting will not apply, however, unless the department has determined that the same work can be done more cheaply by the private sector. The department must consider all of its direct and indirect costs in determining the cost of providing the services and file a yearly maintenance contract report with the Legislative Budget Board.

**Engineering and design contracts.** TXDOT is directed to develop a policy regarding the regular use of engineering and design contracts and to achieve a balance between the use of department employees and private contractors, provided that the costs would be generally equivalent. Relevant costs are to be determined by the state

auditor, and hearings must be held to air private sector complaints about the selection process.

**Highway equipment and motor vehicle maintenance.** The department is to use private sector contracts for at least 25 percent of its vehicle and equipment maintenance, if the services are of comparable quality and can be purchased at a savings of at least 10 percent. To determine the cost of providing services, TXDOT must consider both direct and indirect costs.

**Lease of rest areas.** The department may lease rest areas to private parties to provide services to travelers. A lessee need not be licensed by the Texas Commission for the Blind. Those leasing an area must maintain the property and repair any damage they cause, or pay the state for damages.

### **Railroad crossing safety information**

TXDOT is to post the Department of Public Safety's toll-free number for citizens to report malfunctioning railroad-crossing safety devices on the crossbars of all public roads maintained by cities (the current requirement applies to unincorporated areas), and the Department of Public Safety will include these crossings in its computerized list of railroad crossings.

### **Ferry toll limitations**

HB 9 maintains the authority of TXDOT to acquire, construct and maintain ferries, but it removes a statutory provision allowing the department to charge tolls so that these ferries can be partially or totally self-financing.

### **Other provisions**

As of January 1, 1992, TXDOT is to provide specially designed license plates and removable windshield ID cards for motor vehicles, and motorcycles with sidecars, operated by permanently disabled people. The cards will be valid for five years.

HB 9 designates a portion of U.S. Highway 59 between Laredo and Houston as Senator Lloyd Bentsen Highway.

Machinery used only for drilling water wells is exempted from vehicle length limitations in VACS art. 6701d-11, sec. 3(c).

The bill requests that the House speaker and the lieutenant governor include a study of condemnation of property in the charges for interim studies.

VACS art. 6701d was amended to clarify that a "school crossing zone" means a reduced speed zone at a time when the reduced speed limit applies. The bill also defines "school crosswalk."



## **HB 7: Reorganization of Health and Human Services Agencies**

HB 7 by Vowell, first called session, establishes a new Health and Human Services Commission to oversee 11 agencies. It creates two new departments into which various health-agency activities will be transferred and shifts certain health-agency activities to other agencies. It creates a task force to study consolidation and closure of mental health and mental retardation facilities. It adds new enforcement powers for child-support collection and restricts activities of health-care workers infected with HIV or hepatitis-B virus.

### **Health and Human Services Commission**

The new Health and Human Services Commission, created September 1, 1991, is to oversee and coordinate the functions of 11 agencies: the Interagency Council on Early Childhood Intervention Services, the Texas Department on Aging, the Texas Commission on Alcohol and Drug Abuse, the Texas Commission for the Blind, the Texas Commission for the Deaf and Hearing Impaired, the Texas Department of Health, the Texas Department of Human Services, the Texas Juvenile Probation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission and the Texas Youth Commission. The boards for these agencies may fill a vacancy in the position of administrative head of the agency only with the approval of the governor.

The commission is primarily responsible for ensuring the delivery of health services and is to coordinate programs and settle disputes among the agencies under its jurisdiction. The commission is to review proposed rules of the agencies and may require their amendment or withdrawal. Agency appropriation requests to the Legislature will be consolidated and submitted by the commission.

The commission is to administer federal Medicaid program funds. By September 1, 1992, the Office of Youth Care Investigations in the Attorney General's Office will be transferred to the commission. The duties of the Governor's Council on Health and Human Services were transferred to the commission as of September 1, 1991. The commission will be abolished September 1, 1999 unless continued under the sunset process.

A commissioner of health and human services, to be named by the governor and confirmed by the Senate, will head the new Health and Human Services Commission. The first commissioner must be named by the governor no later than March 1, 1992. The commissioner will serve a two-year term expiring February 1 of odd-numbered years.

The commissioner's duties include arbitration of inter-agency disputes, coordination of planning and delivery of health and human services, managing and maximizing federal funding, development of computer systems for agencies to share relevant data, establishing and enforcing uniform regional boundaries for all health and human services agencies and developing a regional funds distribution formula. The commissioner may establish and delegate duties to divisions within the commission.

The commissioner must issue a six-year health and human services plan to the governor, lieutenant governor and speaker of the House by October 15, 1992, with updates every two years. By January 1, 1993, the commissioner must submit to the governor and the Legislature an implementation plan for consolidating the state's health and human services agencies, and not later than September 1, 1995 the commissioner is to complete the reorganization plan.

### **Department of Protective and Regulatory Services**

HB 7 creates a Department of Protective and Regulatory Services (DPRS), which will be primarily responsible for protective services and the licensing of facilities involving the protection of children, the aged and residents of state facilities. The department will be overseen by a six-member board, to be appointed by the governor no later than June 1, 1992. The board will hire, subject to the governor's approval, a director to serve at the pleasure of the board. The DPRS will be abolished September 1, 1991 unless continued under the sunset process.

On September 1, 1992, the Department of Human Services' oversight of child protective services, including adoption and foster care, will be transferred to the DPRS, as will the Department of Mental Health and Mental Retardation's oversight of abuse and neglect investigations.

On September 1, 1993, the DPRS will assume the Department of Health's oversight of abuse and neglect investigations in long-term care facilities, regulation, licensing and certification of institutions other than long-term care facilities, along with the Department of Human Services' adult protective services program and licensure of child care facilities.

### **Department of Public Health**

HB 7 creates a Department of Public Health (DPH) that will be primarily responsible for providing health services including disease prevention, health promotion, indigent health care and certain acute-care services. A six-member board, which must be appointed by the governor no later than April 1, 1993, will oversee the

department. The board will hire, subject to the governor's approval, a director to serve at the pleasure of the board. A preventive health services division and an acute care services division will be established within the department. The DPH will be abolished September 1, 1999 unless continued under the sunset process.

Starting September 1, 1993, the DPH will assume the Texas Department of Human Services' oversight of preventative health services programs, diagnosis and treatment, family planning, purchased health services and indigent health care; the Texas Department of Mental Health and Mental Retardation's genetics screening and counseling program; and the Texas Department of Health's oversight of community and rural health, disease prevention, chronic disease prevention and control, the Texas Diabetes Council, the San Antonio State Chest Hospital and South Texas Hospital and activities involving vital statistics, food and drugs, maternal and child health, epilepsy, primary care, dental health, chronically ill and disabled children, children's outreach heart programs, kidney health care and adult hemophilia.

### **Texas Cancer Council**

As of September 1, 1991, the Texas Cancer Council was established as a separate agency, rather than as part of the Department of Health. The membership of the council was revised, and the governor, rather than the House speaker, will appoint the chair.

### **Other jurisdictional shifts**

**Environmental duties.** On March 1, 1992, environmental protection duties of the Texas Board of Health and the Texas Department of Health will be transferred to the Texas Water Commission. (This provision is almost identical to a provision in SB 2 by Parker, first called session, environmental agency reorganization.)

**Low-income emergency programs.** On September 1, 1992, the low-income home energy assistance and emergency nutrition and temporary emergency relief programs in the Texas Department of Human Services will be transferred to the Texas Department of Housing and Community Affairs.

**Licensing and certification.** By September 1, 1993, the Texas Department of Health's oversight of long-term care licensing and certification will be transferred to the Texas Department of Human Services.

## **Legislative Health and Human Services Board**

A 10-member Legislative Health and Human Services Board is to oversee and review the implementation of health and human services policy. The members include the lieutenant governor, the House speaker, the chairs of the Senate Health and Human Services Committee and the Senate Finance Committee, four House members appointed by the speaker and two senators appointed by the lieutenant governor. The speaker and the lieutenant governor will alternate as chair for a fiscal biennium. The board may require information and reports from state agencies. It will review periodically the actions or proposed actions of the Health and Human Services Commission and other agencies to ensure compliance with legislative intent and notify the commission of any conflict with that intent.

## **Office of Minority Health**

A new Office of Minority Health is to develop minority health initiatives. Its governing board will be drawn from the Council on Minority Health Affairs. The board may hire a director, and the Department of Health is to provide administrative support. The office is to provide a central information and referral source and to coordinate, plan and advocate access to minority health care services. It is to monitor other programs directed at minority health access, develop a strategic plan and propose legislation. It is to report to the Legislature by January 1 of each odd-numbered year and will be abolished as of September 1, 1999, unless continued following sunset review.

## **Mental Health Task Force**

The Texas Department of Mental Health and Mental Retardation State Facility Review Task Force will be established, contingent on court approval the August 1991 settlement agreement in *Lelsz v. Kavanagh* (a lawsuit filed on behalf of state-school residents alleging substandard treatment, training and care).

The task force will have five members appointed by the governor from the general public. (SCR 20 by Barrientos, first called session, requests the governor to appoint the task force members from a list of qualified individuals submitted by the lieutenant governor and the House speaker.) Gov. Ann Richards announced the task force appointees on Oct. 1.

The task force is to determine which state facilities, if any, should be closed or consolidated. (The proposed settlement agreement calls for closing two of the 13 state hospitals for the mentally retarded; there also are eight state hospitals for the mentally disabled.) It must report to the governor by March 31, 1992, regarding state

schools and community facilities, and by December 1, 1992, regarding state hospitals and state centers. The governor may reject all or part of the task force's recommendations within 20 days of receiving them.

The Texas Department of Mental Health and Mental Retardation is to implement any recommendations not rejected by the governor. The department is to develop a plan for taking care of each client affected by a closure or consolidation. The bill expresses the intent of the Legislature to provide funding to ensure appropriate and adequate care for clients affected by task force recommendations. The department also must develop and implement a plan for the future employment of employees affected by a closure or consolidation.

### **Mental health/retardation facilities bond authorization**

Contingent on voter approval on November 5, 1991 of SJR 4 (Proposition 4), authorizing issuance of \$1.1 billion in general-obligation bonds for corrections and mental health and mental retardation facilities, HB 7 authorizes issuance of up to \$45 million in general-obligation bonds to finance acquiring, constructing or equipping new mental health or mental retardation facilities or the repair or renovation. (HB 64 by Vowell, second called session, appropriates \$35.4 million from bond proceeds for TXMHMR facilities during fiscal 1992-93.)

### **Child-support enforcement**

HB 7 makes various changes regarding child-support enforcement. Child support notice-of-delinquency proceedings may now be initiated by a domestic relations office attorney, a court-appointed friend of the court or a private attorney representing the custodial parent, in addition to the Attorney General's Office. The duties of domestic relations offices now include enforcement of child-support orders.

Any beneficiary of a child-support lien may assert and enforce it. The lien attaches to non-homestead real property and personal property not exempt under the Texas Constitution.

In determining how a child's health insurance is to be provided, a court must order the parent owing the child support to cover the child under a health insurance policy available through the parent's employment, unless it can be shown that such an order would not be in the best interest of the child. If no such health insurance is available, but can be obtained through the employment of the parent who is owed the child support, the court must order that the parent owing child support pay the extra cost to the other parent, unless it can be shown that such an order would not be in the best interest of the child.

A mechanism is to be created for the parent owed the child support, a domestic relations office or the attorney general to order the employer of a parent required to provide child support to enroll the child in the employer's health insurance coverage as the parent's dependent.

Other child-support provisions of HB 7 are intended to facilitate access to information concerning parents, give child support agencies authority to commence enforcement proceedings of a child support order, and create a mechanism for parents to settle disputes in negotiation conferences.

### **HIV and other viral transmission by health-care workers**

Health care workers infected with HIV or hepatitis-B virus may not perform exposure-prone procedures unless they seek counsel from an expert review panel regarding under what circumstances, if any, they may continue to perform such procedures. Also, an infected health-care worker must obtain a patient's consent prior to performing exposure-prone procedures, unless the patient is unable to consent. Health-care workers who violate these provisions are subject to disciplinary procedures by the appropriate licensing agency.

HB 7 specifically does not require testing of health care workers or license revocation of infected health-care workers. Infected health-care workers may not be prohibited from performing procedures not considered exposure-prone, providing health-care services in emergency situations or performing exposure-prone procedures, with proper precautions, to persons infected with HIV.

### **Birth-certificate fraud**

HB 7 includes provisions aimed at preventing birth certificate fraud, with specific provisions directed at midwives.

Directing another person to make a false statement on a government record of vital statistics (such as a birth or death certificate) or fraudulently identifying oneself to obtain or return a form is a third-degree felony (maximum penalty 10 years in prison and a \$10,000 fine). Anyone convicted of the offense may not, as a condition of their probation or parole, practice midwifery. Making a false statement or false record on a birth certificate also was added as specific prohibited act for midwives.

## **Illegal solicitation of patients**

HB 7 makes it a criminal offense for health-care professionals to offer to pay or agree to accept remuneration for securing or soliciting patients or patronage. The provision does not apply to advertising or to marketing and other services to secure or solicit patients if the payment is set in advance, consistent with fair market value for the services and not based on the volume or value of any patient referrals. The offense is a class A misdemeanor (maximum penalty one year in jail and a \$3,000 fine) and a third degree felony for repeat offenses and is considered grounds for disciplinary action. (This provision is aimed at prohibiting the payment of a "bounty" for referring patients to particular health facilities.)

## **Commitment to mental health facilities**

A warrant to apprehend a person committed to a mental health institution may be issued only to an on-duty peace officer.

A person who transports a patient who has been committed to a mental health facility may not receive remuneration, except for actual and necessary expenses.

## **Nursing home penalties**

HB 7 includes standards to be applied by the Department of Human Services in establishing and assessing penalties for contract violations by nursing facilities. An advisory committee of consumer advocates and long-term care providers is to develop a system for assessing penalties. The penalties must be established by rule, and appeals are subject to the Administrative Procedures Act. Funds collected as penalties are to be used for the protection of nursing home residents.

## **Adoption and child placement**

HB 7 amended the Family Code to clarify that in all cases an adopted child, after becoming an adult, may have access to state records regarding the child's history but that the records must be edited to protect the identity of the biological parents and any other person whose identity is confidential. It also provides that if a parent-child relationship is terminated due to child abuse, the Department of Human Services must make a reasonable attempt to contact the other parent or a suitable relative and provide evidence to the court that a diligent effort was made.

## **HB 62: Revising Regulation of the Insurance Industry**

During the 1991 regular session the Legislature enacted HB 2 by Cavazos, Stiles, et al., which revised the regulation of the insurance industry. During the second called session the Legislature further revised insurance-industry regulation by enacting HB 62 by Counts, et al.

HB 62 moves up the effective date of deregulation and rating flexibility for certain types of insurance, deregulates rates for workers' compensation coverage and will replace the Workers' Compensation Insurance Facility with a new bond-financed state fund. It privatizes the liquidation of impaired or insolvent insurers, expands regulation of credit life and credit accident and health insurance, tightens licensing of insurance agents, clarifies provisions on proof of auto insurance and makes various other changes in state insurance regulation. HB 62 generally takes effect January 1, 1992, except for numerous provisions with different effective dates.

The sunset date for the Department of Insurance and the Office of Public Insurance Counsel was moved up; both will be abolished September 1, 1993, rather than September 1, 1995, unless continued by the Legislature after a sunset review.

### **Insurance rates**

**General liability and commercial property insurance.** HB 2 will allow general liability and commercial property insurance companies to set their own premium rates instead of having those rates set by the State Board of Insurance. (SBI). HB 62 moved up the start of the trial period of rate deregulation for general liability and commercial property insurance from September 1, 1992, the date stipulated in HB 2, to October 1, 1991. (The trial period still will end on December 31, 1995.)

(General liability insurance protects the insured from liability for injuries or damage caused by ownership of property, manufacturing operations, contracting operations, sale or distribution of products and professional services. Property insurance provides financial protection against the loss of, or the damage to, real or personal property caused by specified perils.)

**Motor-vehicle and personal property insurance.** HB 2 will establish a flexible rating program for setting motor vehicle and personal property insurance, under which insurers may charge a range of rates without prior approval from the SBI. HB 62 moved up the starting date for the flexible-rate program to March 1, 1992 instead of September 1, 1992, the date stipulated in HB 2. (The flexible-rating program will run through December 31, 1995.) HB 62 also moved up the date the



SBI is required to conduct hearings to determine the benchmark rates and range of rates insurers from July 1, 1992 to January 1, 1992.

**No discrimination in rates or renewal.** In determining rates and renewal of policies, insurers may not discriminate on the basis of race, color, religion or national origin, and, if not justified by sound actuarial principles, on the basis of geographical location, disability, sex or age.

**Lloyd's and reciprocal exchanges.** Lloyd's insurers are an unincorporated group of individuals that assume a proportionate part of a risk accepted by an underwriter. Reciprocal exchanges are unincorporated insurers made up of members that insure each other. Under HB 62, both are made subject to state laws on motor vehicle insurance, including the flexible-rating program. Also, Lloyd's insurers are no longer permitted to sell fire insurance at rates lower than the regulated rates.

### **Workers' compensation**

**Deregulation of rates.** Insurers may set their own rates for workers' compensation coverage, subject to disapproval by the SBI. (Under prior law, workers' compensation insurers could deviate up to 75 percent from the rate set by the SBI.) In setting rates, insurers have to consider loss cost experience, operation expenses, investment income, a reasonable profit margin and other relevant factors. Rates may not be excessive, inadequate or unfairly discriminatory.

For rates applicable solely to Texas policyholders, insurers are required to use data from Texas and may only use out-of-state information as a supplement to state information that is not actuarially credible.

Insurers are required to file all rates and supporting information with the insurance board and may file new rates no more than once every six months. The SBI must disapprove any rate filing that does not meet rate standards, but only after a hearing. The SBI may order insurers to adjust their rates to meet standards.

The rates charged by insurers for workers' compensation insurance policies with estimated premiums of less than \$100,000 are capped. The premiums on policies written between the "rate-change date" and July 1, 1993 may not be more than 15 percent greater than the 1991 rates set by the insurance board. The rate-change date will be the later of March 1, 1992 or 60 days after the new Texas Workers' Compensation Insurance Fund issues its first policy. Insurers may not charge premiums over 30 percent greater than the premium rates for 1991 on policies written on or after July 1, 1993.

The SBI may not contract with an insurer or advisory organization in establishing statistical plans. The board must develop confidential procedures for conducting computer audits to verify rate information filed by insurers.

The SBI may assess administrative penalties against insurers that it determines, from a pattern of premium charges, are consistently overcharging or undercharging.

**Workers' Compensation Insurance Fund.** The Workers' Compensation Insurance Facility (an insurance pool that provides coverage to employers unable to obtain insurance) will be gradually replaced with the Texas Workers' Compensation Insurance Fund, a state fund that offers workers' compensation coverage.

The facility will continue providing workers' compensation coverage to employers under the rejected risk fund until January 1, 1994. The Workers' Compensation Insurance Fund will accept all risks, starting January 1, 1994, and assume all claim liabilities of the facility by January 1, 1999. The fund is abolished September 1, 1995, unless continued by the Legislature after sunset review.

The state fund is not liable for any facility deficits incurred on policies effective before January 1, 1992. A deficit or surplus in the facility for policies that were effective before January 1, 1992 are to be assessed or rebated to the insurers who were facility members during the policy year. Any facility deficit or surplus for policies effective on or after January 1, 1992 is to be assessed or rebated to the insurers and the state fund.

The Texas Workers' Compensation Insurance Fund is to be run by a governor-appointed board of directors that will supervise management of the fund and file premium rates with the insurance board like other insurers. Rates must cover claims, meet business expenses and maintain a reasonable surplus.

The state fund is to be financed through revenue bonds, with initial funding from a \$5-million transfer from the insurance board operating fund that is to be repaid from proceeds from bond sales.

The Texas Public Finance Authority is to issue up to \$300,000 in bonds maintain and operate the fund. The bonds will be secured by a maintenance tax on gross workers' compensation premiums, charged to each workers' compensation insurer, self-insurer and the state fund. The tax rate will be set by the insurance board. The bonds are not a moral or legal obligation of the state.

The state fund may refuse to sell coverage to employers who are credit risks and cannot pay in advance the total estimated premium or provide security for payment.

Employers with a poor safety record that were in the rejected risk fund or insured under the state fund are required to obtain a safety consultation. Any employer who does not implement an accident prevention plan developed from the consultation has the option of canceling coverage. Otherwise, the fund could cancel coverage or the commission may assess an administrative penalty up to \$5,000 for each day of noncompliance.

A program is created within the fund to identify and investigate fraud and insurance violations.

**Wrongful acts.** It is an administrative violation for a person to intentionally or knowingly falsify, conceal, alter or destroy information when obtaining workers' compensation coverage, or to conspire to do so. It is a violation to knowingly and intentionally obtain workers' compensation insurance from an insurer not authorized in Texas. Such violations carry a fine up to \$5,000. A policyholder who commits a violation is liable to the insurer for the difference between the premium due and the premium actually charged, plus reasonable attorney fees.

The insurance board may penalize any insurer who requires another policy to be purchased as a condition for issuing a workers' compensation policy.

### **Guaranty associations and liquidation of insurers**

Guaranty associations are non-profit entities composed of insurers that cover of the obligations of fellow insurers that are impaired or insolvent. The members of a guaranty association contribute money to cover the cost of paying claims and other obligations of an insurer who is in receivership. The associations are exempt from taxes, except property taxes.

HB 62 transfers the functions of the state insurance liquidator to guaranty associations and the insurance commissioner, beginning January 1, 1992. However, it also allows the commissioner and the guaranty associations to begin work before that date. The Title, Property & Casualty, and Life, Health and Accident guaranty associations, rather than the state insurance liquidator, are responsible for processing and paying claims of failed insurers.

The insurance commissioner or special deputy commissioners appointed by the insurance commissioner will act as receivers to oversee the liquidation of impaired or

insolvent insurers. The SBI will have rule-making authority regarding guaranty funds and liquidation of insurers. The state auditor may audit the insurance commissioner as receiver and audit the special deputy receivers and the guaranty associations.

Employees of the liquidator division in the insurance department will not be allowed to perform other jobs at the Department of Insurance, as of January 1, 1994. Department of Insurance employees who lose their jobs because of workforce reductions are exempted from the "revolving door" restriction that prohibits an employee who was paid more than \$28,836 a year during fiscal 1992-93 from working for or representing the insurance industry before the SBI for two years.

**Special deputy receivers.** To supervise impaired or insolvent insurers, special deputy receivers are to be selected by the insurance commissioner on a competitive basis and serve at the commissioner's pleasure. A deputy receiver may employ necessary personnel whose salaries and expenses are to be paid by the impaired or insolvent insurer. Deputy receivers are to submit monthly reports to the insurance commissioner and the court with jurisdiction over the insolvent company.

**Deposits into the Treasury Safekeeping Trust Company.** Money collected by receivers is to be deposited into the Texas Treasury Safekeeping Trust Company. However, if the receiver determines it to be advantageous, the money may be deposited into banks or savings and loan associations in which deposits are federally insured.

Assessments and fees collected by the Title, Property & Casualty, and Life, Health and Accident guaranty associations may be deposited in special accounts in the Texas Treasury Safekeeping Trust Company.

**Electronic transfer of funds.** Any taxes, fees, guarantee funds or other funds over \$500,000 that are held by the board must be electronically transferred.

**Title Insurance Guaranty Act.** Title insurance covers owners of real estate if clear ownership of property is challenged by the discovery of defects in the title. HB 62 allows the title insurance guaranty association to assess from its members the amounts necessary to pay claims and eligible obligations of the failed insurer. Assessments may not be more than 2 percent of the net direct premiums sold by the member in the past year.

Claims covered under the title insurance guaranty fund were changed from \$250,000 per claimant to the lesser of either \$250,000 per claimant or per policy. The attorney general is required to defend actions brought against title insurers, the guaranty association or commissioner representatives in liquidation proceedings;

venue is in Travis County. A member insurer may appeal any ruling of the association to the commissioner.

**Property and Casualty Insurance Guaranty Act.** This provision applies generally to all types of property and casualty insurance, but excludes ocean marine insurance and insurance that protects against investment risks. It provides a mechanism to collect necessary funds from members to pay obligations from impaired insurers.

The board of directors of the property and casualty insurance guaranty association is increased from eight to nine members. Five members are to be chosen by member insurers, subject to approval by the commissioner and the commissioner will appoint the remaining four members from the general public. (Prior law requires the State Board of Insurance to appoint all board members from among the member insurers.)

The association may be examined and regulated by the commissioner and is required to submit an annual financial report to the commissioner. The commissioner is to notify the association of impaired insurers within three days after notice is given of any designation of impairment. The commissioner may require the association to notify the policyholders and interested parties when an insurer is designated as impaired. The commissioner may fine an insurer who fails to pay an assessment when due or suspend or revoke the insurer's license to do business. An action by the commissioner may be appealed to the courts; venue is in Travis County.

Member insurers, the association, the board, special deputy agents and the commissioner are immune from liability for good-faith actions. The attorney general is required to defend only actions regarding immunity from liability brought against them.

Insurers are to receive a 100-percent tax credit against premium taxes for assessments paid to the guaranty fund. The credit applies at a rate of 10 percent per year for 10 successive years following the date of assessment.

**Life, Accident, Health and Hospital Service Insurance Guaranty Act.** This provision protects policyholders if an insurer is unable to fulfill its contractual obligations, as defined in the act, because of impairment or insolvency. If the association does not provide benefits to policyholders in a reasonable amount of time, the insurance commissioner may take over the powers and duties of the association.

The nine-member board of directors will include five members appointed from the general public. (Under prior law, the board included only insurers.)

The association may assess its members amounts needed to meet administrative costs and any costs incurred by an impaired or insolvent insurer. The commissioner may revoke the license of an insurer that does not pay assessments on time. Insurers are entitled to a 100 percent tax-credit against premium taxes for assessments paid to the guaranty fund, which applies at a rate of 10 percent a year for 10 years.

No one may advertise the existence of the association to sell, solicit or induce buying life, accident, health and hospital-service insurance.

Venue in any suit against the association is in Travis County.

### **Credit life and credit accident**

Beginning June 30, 1992, regulation of credit insurance lines extends to policies with a loan or transaction period of 10 years or less, rather than five years. However, the department may not oversee insurance involving a credit transaction that is secured by a first mortgage or deed of trust and is made to finance or refinance commercial real property or the construction of certain dwellings. By June 30, 1992, the Texas Department of Insurance is required to conduct a hearing on the presumptive premium rate for credit insurance policies covering transactions of five to 10 years' duration.

The department is required to charge a fee up to \$200 for forms or schedules filed for these insurance lines.

### **Chemical dependency health-insurance limits**

HB 62 allows group health insurers to provide directly or to contract for chemical dependency treatment. It permits them to limit the dollar coverage and to limit to three the number of treatments a policyholder may receive.

### **Licensing of insurance agents**

The department may charge a non-refundable \$100 filing fee for issuing a temporary license to health-and-accident and life-insurance agent applicants, which will allow the agent-applicant to issue policies for 90 days without passing the required written exam.

Life insurance agent applicants are required to include in their applications proof that the required examination had been successfully completed and passed. The department is required to charge an examination fee up to \$20 for each exam.

The SBI has sole jurisdiction over continuing education requirements of insurance agents.

### **Agents of process for domestic insurers**

Domestic insurers who move their principal offices or records outside the state are required to appoint an agent for service of process in judicial and administrative actions, rather than appointing the insurance commissioner as the agent, as under current law. The commissioner is authorized to accept service if the insurer does not appoint an agent who cannot with reasonable diligence be found.

### **Subpoena authority**

Subpoenas may be issued only by the commissioner and at least one member of the board.

### **Prompt payment of claims**

Provisions in prior law regarding the prompt payment of claims do not apply to workers'-compensation and mortgage-guaranty insurance. Also, in weather-related catastrophes or major natural disasters, prompt-payment deadlines are extended an additional 15 days. Surplus lines insurers are required to pay a claim within 20 business days after notice or the date the act occurred. Beginning October 1, 1991, insurers are not required to notify a policy holder of a premium increase resulting from a change requested by the policy holder.

(Prior law requires insurers to acknowledge and begin investigating claims within 15 business days of notification. Within 15 days after receiving the required information, an insurer must notify the claimant whether the claim is accepted or rejected. An accepted claim must be paid within five business days of notice of acceptance.)

### **Medicare supplement insurance**

Various revisions in Medicare-supplement regulation are made to comply with federal law. The SBI is required to establish standards for long-term insurance.

### **Motor-vehicle proof of insurance**

Under current law, no motor vehicle may be operated in Texas unless it is covered by statutory amounts of automobile liability insurance. As a condition to driving, every motor-vehicle driver or owner must furnish, upon request by an

enforcement officer, "evidence of financial responsibility" that shows the vehicle is insured as required by law. Documents that satisfy evidence of financial responsibility are enumerated in the law.

Provisions in prior law generally referring to "evidence of financial responsibility" were eliminated. Instead, failure or refusal of a motor vehicle operator to furnish a document enumerated in the law creates a presumption that the operator has violated the requirement that no motor vehicle be operated without a minimum amount of automobile liability insurance.

### **Miscellaneous**

Beginning with policies effective January 1, 1992, liability insurance for school board members also covers them when they serve on the board of a county education district.

HB 62 prohibits an insurer from requiring disclosure of a person's federal income tax returns as a condition of settling a claim. In addition to being prohibited by the Insurance Code, it also is considered a violation of the Deceptive Trade Act.

HB 62 prohibits reducing the insurance coverage of a windstorm and hail insurance policyholder because it is above the liability limits, as of September 1, 1991.

The SBI is to set a benchmark rate for insurance issued under the Texas Catastrophe Property Insurance Pool by December 31, 1991.

State employees may authorize deductions from their salaries for supplemental optional benefits.



## **SB 41: Commerce Department Revisions, Bonds, Enterprise Zones**

SB 41 by Glasgow, second called session, changes the Texas Department of Commerce (TDOC) governing board to a policy board and allows the governor to appoint the agency's executive director. It also transfers the Community Development Block Grant program from TDOC to the Department of Housing and Community Affairs, revises the allocation of private activity bonds, revises the goals of the Job Training and Partnership Act to include retraining individuals who have lost their jobs, extends the Texas Enterprise Zone program until August 31, 1993, and transfers the music, film, television, and multimedia programs from TDOC to the Governor's Office.

### **TDOC policy board**

The TDOC policy board will not be involved in the daily operation of the department. The governor designates the board's presiding officer. The policy board has the following duties: establish policy, adopt rules specified in law, evaluate the implementation of new legislation, review and comment on the TDOC budget, prepare the TDOC's annual report, conduct investigations and studies and develop long-range plans. The board may delegate its duties, except those that involved the issuance of bonds, to the executive director. It must report on the department's activities to the governor annually and to the Legislature during regular sessions.

The members of the existing TDOC governing board will continue as members of the new policy board.

(HB 1029 by Granoff, regular session, increased the board of six gubernatorial appointees to nine by adding three ex officio members: the chair of the State Job Training Coordinating Council and the presiding officers of the International Trade Commission and the Texas-Mexico Authority, who are all appointed to their respective positions by the governor.)

Board members may be removed for violating conflict-of-interest provisions, being unable to perform their duties because of illness or disability, being absent and not excused for more than half of the scheduled board meetings in a calendar year. The board must meet at least four times a year.

## **TDOC executive director**

The executive director of TDOC no longer serves at the pleasure of the board but is appointed by the governor for a two-year term with the advice and consent of the Senate. The executive director is responsible for managing the affairs of the department and names the heads of TDOC divisions. The executive director has co-authority with the policy board to appoint advisory committees and to jointly develop policies that define their respective responsibilities as well as that of the TDOC staff.

SB 41 requires the executive director to hire TDOC personnel, who must include a human rights officer and an internal auditor who reports directly to the governor. The bill sets up a TDOC personnel policy, which includes an intra-agency career ladder program and annual performance evaluations on which merit pay is to be allocated. The executive is required to have a written policy regarding equal employment opportunities, which is to be updated annually and filed with the Governor's Office.

The governor is to appoint the first executive director before January 2, 1992, for a term expiring on February 1, 1993. Subsequent terms expire on February 1 of odd-numbered years.

## **TDOC management**

TDOC must prepare an annual fiscal report detailing funds received and disbursed and file it with the governor, the lieutenant governor and the speaker of the House.

TDOC is to prepare a publication describing the department's functions, including information describing how the department handles public complaints. The department is required to keep a file of complaints and to inform complainants of the status of the complaint at least once every three months.

The department must have a plan that describes how a disabled person or one who does not speak English can have access to the department's programs.

SB 41 specifies conflict-of-interest criteria for policy board members, the executive director and TDOC employees.

## **Community Development Block Grant Program transfer**

On September 1, 1991, the Community Development Block Grant program of TDOC was moved to the Community Affairs Division of the Texas Department of

Housing and Community Affairs (TDHCA) (which was created by SB 546, regular session). The program may transfer up to 20 percent of Community Development Block Grant federal funds to TDOC to be used for economic development and must approve how TDOC uses the federal funds. TDOC may keep any income from the economic development programs but is required to return to TDHCA any federal funds not used on a timely basis.

SB 41 creates a 12-member state community development review committee, appointed by the governor for two-year terms. Members are to come from governing bodies of political subdivisions eligible for community grants or a city or county management-level employee involved in community development activities.

The committee is to meet twice a year to consult and advise the director and review applications from eligible localities. The committee may recommend a geographic allocation formula for allocation of funds.

### **Job-Training Partnership Act (JTPA)**

SB 41 amends the JTPA in three ways: 1) requires the State Job Training Coordinating Council (SJTCC) to develop conflict-of-interest guidelines for the private industry councils, 2) amends the JTPA program goals to specifically include workers who have been laid off from full-time employment as a group targeted for assistance, and 3) allows the TDOC to contract with public community and junior colleges to provide youth programs for drop-outs.

### **Private-activity bond allocations**

Federal law limits the annual amount of tax-exempt "private activity" bonds that may be issued by government entities within each state to finance non-governmental enterprises. SB 41 adds multi-family housing bonds as a separate category under private-activity bond allocations and gives it 5 percent of the state allocation. The bill revises the ceilings on other private-activity bond categories by lowering the ceiling on mortgage bonds from 33 percent to 28 percent, increasing the state-voted bonds category from 15 percent to 17.5 percent and lowering the small-issue bond cap from 10 percent to 7.5 percent. The general category remains at 42 percent.

The bill permits the private-activity bonds allocation for single-family mortgages and small issue bonds to be reallocated to other categories if the federal government eliminates their tax-exempt status. The Bond Review Board is to adopt rules that require payment of closing fees at the time of bond closings. SB 41 makes

other changes regarding reservations under the various private-activity bond categories that will take effect January 1, 1992.

### **Enterprise zones**

SB 41 extends the Texas Enterprise Zone program through August 31, 1993 and makes numerous other changes in the program. For businesses to be eligible for tax breaks and regulatory relief in enterprise zones, at least 25 percent of their employees must be zone residents or "economically disadvantaged." SB 41 broadened the definition of an "economically disadvantaged" individual to include: 1) a person who has been unemployed for at least three months, instead of six months, before getting a job; 2) a person who currently receives public assistance, instead of one who has received public assistance; 3) a handicapped person, as defined by federal law; 4) an inmate released from the Texas prison system and 5) a person who qualifies for low income or moderate income housing under federal law. An unemployed person is no longer defined as one who has exhausted all unemployment benefits. The bill defines an economically distressed area as one that has had a population loss of at least 3 percent for the most recent three years, instead of 1.5 percent for the most recent six years.

The definition of an enterprise zone project is changed to include qualified businesses located in an enterprise zone that has had a population loss of at least 4 percent in the most recent three years, instead of one with a yearly population loss of 2 percent for the most recent six years.

Applications for enterprise zones projects must include the number of permanent jobs the project would retain or create.

The Texas Enterprise Zone Act offers businesses that locate or remain in depressed urban and rural areas that have pervasive poverty or unemployment a refund of state sales tax against building materials and machinery or equipment to be used in the enterprise zone. It allows a \$2,000 sales tax refund for each permanent job created by the business. SB 41 requires the enterprise project to maintain at least the same level of employment it had at the time it qualified for a refund for three years. If the TDOC certifies an enterprise project has not maintained the necessary level of employment, then the comptroller is to collect the portion of the refund attributed to the decrease in employment plus penalty and interest.

TDOC is to allocate the maximum number of jobs the enterprise zone project could use in calculating its tax refund at the time it designates the enterprise project. The ceiling is the lesser of 625 jobs or a number equal to 110 percent of the number

of new permanent jobs that the business says it will create during the five-year period it is designated an enterprise project.

SB 41 prohibits an enterprise zone project designated after August 31, 1991, from receiving a franchise tax deduction based on 50 percent of its capital investment in the enterprise zone until after August 31, 1993.

### **Office of Music, Film, Television and Multimedia**

SB 41 creates a Music, Film, Television and Multimedia Office in the Governor's Office to promote the development of those industries and to inform the industries of production resources available in Texas. The governor may hire an executive director and appoint advisers to administer the office. A Music, Film, Television and Multimedia Fund is created in the state Treasury to handle funds associated with the office. SB 41 abolishes the music and film, television, and multimedia industry departments in TDOC.

### **Unemployment tax charge-back disaster relief**

The rate of unemployment compensation tax paid by employers is based on the number of their "charge-backs," i.e. former employees who claim compensation. SB 41 provides that as of September 1, 1991, employees laid off due to a natural disaster, fire, flood or explosion will not be counted as charge-backs for purposes of calculating their employer's unemployment tax rate.

The bill "grandfathers" businesses that would have been granted a reduction in charge-backs had the new law been in effect on June 1, 1991. Businesses that laid off employees as a result of natural disasters between June 1 and August 31, 1991 and wish to have their charge-backs recalculated must notify TDOC and the Texas Employment Commission.

## **HB 39: Continuing the General Services Commission**

HB 39 by Gibson, second called session, continues the State Purchasing and General Services Commission under the name "General Services Commission," until September 1, 1993. The agency board is increased from three to six members.

### **Purchasing**

The General Services Commission (GSC) is required to remove a vendor's name from the agency bidder list for up to one year if the department receives repeated complaints about the vendor. The dollar value of state agency purchases that do not have to be made through GSC is raised from \$500 to \$5,000. State agencies making purchases over \$5,000 must solicit bids from all eligible vendors on the agency's bidding list. Competitive bidding is not required for purchases over \$1,000 (rather than \$100). GSC is required to give preference to energy-efficient products that meet specifications and cost the same or less than similar products.

### **Travel**

GSC must adopt rules for the structure of travel agency services and related contract requirements. (Executive branch agencies are now required to participate in state-contract rates for travel services; institutions of higher education are exempt.) GSC may establish rules to allow additional exemptions. The State Travel Management Program is prohibited from entering into a single, statewide contract for travel agency services.

### **Telecommunications**

Public universities may provide TEX-AN state telephone services to students in university-owned housing on a cost-recovery basis. Participation by a university is optional, and student participation is voluntary.

The bill states that it is not the policy of the state to provide telecommunications services to the general public in competition with the private sector, unless there is a compelling public need.

With the exception of TEX-AN equipment, GSC may not negotiate pre-approved contracts for telecommunications and automated information systems equipment without the concurrence of the Department of Information Resources (DIR).

## **Jurisdiction shifts**

As of September 1, 1991, the Capitol Security Police Division was transferred from GSC to the Texas Department of Public Safety. The program for eliminating architectural barriers is transferred from GSC to the Texas Department of Licensing and Regulation (TDLR). The department may contract with other state agencies, political subdivisions, nonprofit organizations and private entities to inspect privately financed buildings that are subject to architectural-barrier regulation. Responsibility for the state property accounting system is transferred from the commission to the comptroller.

## **Building projects**

The Texas Public Finance Authority (TPFA) is now required promptly to issue, sell and deposit bond proceeds for projects approved by the Legislature.

State buildings, other than university buildings and prisons, may be named after only deceased persons whose lives were significant to the state. Commission proposals to name or re-name buildings must be approved by a concurrent resolution

## **Vehicle conversion to alternative fuel**

GSC is authorized to set the minimum amount of time by which state agencies and school districts have to convert certain vehicles using traditional engines to use of compressed natural gas or other fuels. Agencies are allowed one or more 90-day extensions (until September 1, 1992) in which to implement conversion plans. of the Legislature signed by the governor.

## State Property Tax Board Shift to Comptroller's Office

SB 45 by Armbrister, second called session, transfers all of the duties, assets, liabilities, obligations and appropriations of the State Property Tax Board (SPTB) to the Comptroller's Office and abolished the SPTB, as of November 24, 1991.

(SB 984 by Armbrister, enacted during the regular session, transferred from the State Property Tax Board to the Comptroller's Office the responsibility for conducting the annual study of taxable property values and the annual study of the degree of uniformity of property tax appraisals, which are used to help determine state funding for public education. The State Property Tax Board had retained its education, technical assistance and rule-making functions.)

Until its abolition, the SPTB developed materials and classes for training and educating tax appraisers and other tax professionals; provided technical assistance and information to appraisal districts, tax professionals and taxpayers; set rules for the operation and administration of appraisal districts and approves forms and records systems; monitored the appraisal of taxes on Permanent University Fund property; and appraised the intangible value of railroads, oil pipelines and common carrier pipelines involved with the transportation of oil, toll roads, toll bridges and ferries.

SB 45 requires the comptroller to consult and cooperate with the Board of Tax Professional Examiners to set standards and approve curricula and materials for educating and educating appraisers, effectively allowing the Board of Tax Professional Examiners and private sector to take over much of the responsibility for education. This function is expanded to include assessor-collectors, traditionally included in the SPTB's educational efforts. The comptroller is authorized to cooperate with other public agencies, educational institutions and private organizations in sponsoring courses and training programs.

Prior to SB 45 no statutory authority *required* districts to allow the examinations of their records. SB 45 authorizes the comptroller to inspect records of appraisal districts or taxing units to establish, and to review or evaluate the value or appraisal of any property.



## Reorganization Timetable

- September 1, 1991:** Texas Department of Transportation (TXDOT) created. Texas Department of Highways and Public Transportation and Texas Department of Aviation abolished and merged into TXDOT.
- Health and Human Services Commission (HHSC) created (commissioner to be named by March 1, 1992). HHSC assumes duties of Governor's Council on Health and Human Services.
- Department of Protective and Regulatory Services (DPRS) established (board to be named by June 1, 1992).
- Department of Public Health (DPH) established (board to be named by April 1, 1993).
- Texas Cancer Council separated from Texas Department of Health (TDH) and established as separate agency.
- State Purchasing and General Services Commission renamed General Services Commission (GSC). Capitol Security Police Division transferred from GSC to Department of Public Safety. Program for eliminating architectural barriers transferred from GSC to Department of Licensing and Regulation. State property accounting system transferred from GSC to Comptroller's Office.
- Office of Music, Film, Television and Multimedia established in Governor's Office; similar functions transferred from Texas Department of Commerce. Community Development Block Grant Program transferred to Texas Department of Housing and Community Affairs (TDHCA) (established September 1, 1991 by merger of Texas Housing Agency and Texas Department of Community Affairs).
- November 24, 1991** State Property Tax Board abolished and its functions transferred to Comptroller's Office.
- March 1, 1992:** TDH environmental protection programs transferred to Texas Water Commission (TWC).

September 1, 1992:

Texas Motor Vehicle Commission abolished and merged into TXDOT.

Department of Health and Human Services (DHS) oversight of child protective services and Texas Department of Mental Health and Mental Retardation (TXMHMR) oversight of abuse and neglect investigations transferred to DPRS.

Low-income home energy audit and emergency nutrition and temporary emergency relief programs transferred from DHS to TDHCA.

Texas Water Well Drillers Board and Board of Irrigators abolished and merged into TWC.

September 1, 1993:

TWC renamed Texas Natural Resources Conservation Commission (TNRCC).

Texas Air Control Board abolished and merged into TNRCC.

TDH oversight of abuse and neglect investigations of long-term care facilities and regulation, licensing and certification of institutions other than long-term care facilities and DHS adult protective services and licensing of child-care facilities transferred to DPRS.

TDH regulation, licensing and certification of long-term care licensing and certification transferred to DHS.

TDH oversight of community and rural health program, disease prevention program, chronic disease prevention and control, the San Antonio State Chest Hospital and South Texas Hospital, and activities involving vital statistics, food and drugs, maternal and child health, epilepsy, primary care, dental health, the Texas Diabetes Council, chronically ill and disabled children, children's outreach programs, kidney health care and adult hemophilia, DHS oversight of preventative health services programs, diagnosis and treatment, family planning, purchased health services and indigent health care and TXMHMR's genetic screening and counseling program transferred to DPH.

September 1, 1995:

Commissioner of HHSC reorganization plan for health and human services agencies (due by January 1, 1993) to be implemented.

Texas High Speed Rail Authority abolished and its functions transferred to Texas Railroad Commission.

## **OTHER ISSUES**

### **Revising Sunset Date for Certain Agencies**

HB 222 by Gibson, first called session, repealed SB 1204 by Barrientos, enacted during the regular session, which would have abolished almost all state agencies as of December 31, 1991. HB 222 also set a new 1993 sunset date for certain agencies that previously had been scheduled for sunset review (in the years in parenthesis):

Texas Alcoholic Beverage Commission (1995), Lay Midwifery Board (1997), Texas Board of Licensure for Nursing Home Examiners (1997), Texas Board of Licensure for Nursing Home Administrators (1997), Texas Advisory Board of Occupational Therapy Examiners (1997), Council for Social Work Certification (1999), and the Texas Department of Commerce (1999).

The bill also changed various other agency sunset-review dates between 1995 and 2003 and removed from sunset review certain small agencies and agencies that have been subsumed by larger agencies.

### **Alcoholic Beverage Sales in Texas Stadium**

SB 3 by Glasgow, second called session, allows the beverage-service permit holder for Texas Stadium in Irving (the Dallas Cowboys) to designate to the Texas Alcoholic Beverage Commission additional premises to be covered by its permit and also prohibits a city law or regulation from limiting alcoholic-beverage sales on those premises. These changes will allow sale of alcoholic beverages within Texas Stadium, implementing an agreement between the Dallas Cowboys and the city of Irving, whose zoning ordinance previously prohibited such sales. (In an August 10, 1991 referendum, the voters of Irving approved such sales.)

SB 3 also reinforces a grandfather clause in sec. 109.57 of the Alcoholic Beverage Code, stating that neither the supplemental-premises authority granted by the bill nor sec. 1.06 of the code (which states that the code exclusively governs regulation of alcoholic beverages) affects the validity of zoning local regulations adopted after June 11, 1987. Amendments to such regulations adopted after June 11, 1987 are allowed to stand if they make the regulations more lenient.

SB 3 provides that no section of the bill is severable, so that if one section is invalidated the entire bill is invalid.

## **Regulating Artesian Well Drilling and Operation**

### **Background**

The right of unlimited capture of underground waters, also recognized in the Water Code, allows a landowner to drill artesian wells, from which underground water flows to the surface from pressure, as long as the well is properly cased and the water does not contain harmful minerals. Wasting artesian well water, defined in sec. 11.205 of the Water Code, is a misdemeanor, punishable by up to \$500 and 90 days in jail.

Recent reports of massive drains on the Edwards Aquifer by an artesian well supplying water to a catfish farm led to efforts to revise the law concerning unlimited capture of underground water.

### **SB 19**

SB 19 by Krier, second called session, puts a 28-month moratorium on drilling and operating free-flowing artesian wells with a flow of over 5,000 gallons per minute or any wells within 1,000 feet of each other with a combined flow of 5,000 gallons per minute. The moratorium does not apply to any land within a Chapter 52 water district.

The moratorium lasts from September 1, 1991 to January 1, 1994. The maximum punishment for a violation is \$500 fine and 90 days in jail. The Texas Water Commission may grant exemptions to the moratorium or may delegate that authority to a water district.

The bill deletes a Water Code section stating that it is not considered waste to use artesian-well water for propagation of fish and other specified uses. SB 19 states specifically that its terms do not limit the authority of local water districts with jurisdiction over the Edwards Aquifer to control waste.

The bill also validates the creation of the Uvalde County Underground Water Conservation District and all acts of its board of directors. The validation does not affect any litigation to which the district is a party that is pending on the bill's effective date. (After withdrawing from the Edwards Underground Water Conservation District in January 1989, Uvalde County voters independently formed the Uvalde County Underground Water District.)

## Limiting Activities on Capitol Grounds

HB 55 by Kuempel, first called session, requires the State Preservation Board to adopt rules regulating visitor activities in the Capitol and on the Capitol grounds. The rules, which may be waived by the board, must prohibit: attachment of signs, placement of furniture for longer than 24 hours, overnight parking of vehicles intended for human occupancy, setting up of camping equipment or shelter, unleashed pets on the grounds and pets other than seeing-eye dogs inside the Capitol. No one is to be permitted to sleep or lie down on paved or improved portions of the Capitol and its grounds or sleep or lie down on unpaved or unimproved portions during the night. The rules also would have to provide for the removal of unruly and disruptive visitors, if the removal did not violate a federal constitutional right.

Rules regulating visitor activities may not violate a person's rights under the Texas Constitution or the First Amendment of the U.S. Constitution, including the rights of people to assemble. The proposed rules must be reviewed by the attorney general before the board may adopt them. Violation of the rules will be a Class C misdemeanor (maximum penalty a \$500 fine).

The State Preservation Board may require a deposit for using the Capitol or its grounds for scheduled activities. The board may deduct the cost of any damage or extra labor, materials, security or utilities from the deposit.

The State Preservation Board, rather than the Capitol architect, is to maintain archives relating to the Capitol and the General Land Office. The board and the Capitol curator are to inventory the buildings' significant contents and identify all historical state-owned items once located in the buildings. The curator is to develop a program to locate and acquire historically significant state-owned items, under which state agencies will transfer identified items in their possession to the board. Identified items in a legislator's Capitol office may be relocated only within the original dimensions of the Capitol and only with the approval of the House or the Senate (as appropriate) Administration Committee chair.

The curator is to try in good faith, with the board and the architect, to help Texas businesses receive a significant number of the contracts awarded for purchases related to the restoration project.

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